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LETTERS DATED 27 AND 30 MARCH 1999, RESPECTIVELY, FROM THE CHAIRMAN OF THE PANELS ESTABLISHED PURSUANT TO THE NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL OF 30 JANUARY 1999 (S/1999/100) ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Letter dated 27 March 1999 from the Chairman of the panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) addressed to the President of the Security Council

With reference to the note by the President of the Security Council (S/1999/100), I have the honour to attach the final report of the panel on disarmament and current and future ongoing monitoring and verification issues (annex I), which was adopted today, 27 March 1999.

As soon as the panel on humanitarian issues and the panel on prisoners of war and Kuwaiti property conclude their work, I will be ready to present the three reports to the Security Council.

(Signed) Celso L. N. AMORIM
Ambassador

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Letter dated 30 March 1999 from the Chairman of the panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) addressed to the President of the Security Council

With reference to the note by the President of the Security Council (S/1999/100) and to the letter dated 27 March 1999, which forwarded the report of the panel on disarmament and current and future ongoing monitoring and verification issues, I have the honour to attach herewith the final report of the panel on humanitarian issues (annex II), as well as the final report of the panel on prisoners of war and Kuwaiti property (annex III), which were adopted today, 30 March 1999.

As stated before, I am ready to present the three reports to the Security Council at an appropriate moment.

(Signed) Celso L. N. AMORIM
Ambassador

Annex I

REPORT OF THE FIRST PANEL ESTABLISHED PURSUANT TO THE NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL ON 30 JANUARY 1999 (S/1999/100), CONCERNING DISARMAMENT AND CURRENT AND FUTURE ONGOING MONITORING AND VERIFICATION ISSUES

1. The panel on disarmament and current and future ongoing monitoring and verification issues, established pursuant to the note issued by the President of the Security Council on 30 January 1999 (S/1999/100), is submitting its report to the Security Council in accordance with paragraphs 1, 2, 3 and 4 of the aforementioned note.

I) Mandate, composition, working methods and plans of work

2. The panel was constituted in the context of increasing concern, among Security Council members, with the interruption of United Nations activities in Iraq in the area of disarmament/ongoing monitoring and verification, in particular since mid-December. During the discussions in the month of January, Security Council members felt that it was urgent to consider the parallel objectives of re-establishing an effective presence of the United Nations and the International Atomic Energy Agency (IAEA) in Iraq in the area of disarmament/prevention of development of proscribed weapons and addressing the humanitarian needs of the Iraqi people. In parallel, the issues of prisoners of war and Kuwaiti property were also brought to the fore.

3. On 30 January 1999, the Security Council decided that it would be useful to establish three separate panels on Iraq and to receive recommendations from them no later than 15 April 1999. In paragraph 2 of document S/1999/100,

the Security Council invited Ambassador Celso L. N. Amorim of Brazil to chair each of the panels.

4. The constitution of the panel on disarmament and current and future ongoing monitoring and verification was defined in paragraph 4 of document S/1999/100, which reads as follows: "The first panel, on disarmament and current and future ongoing monitoring and verification issues, would involve the participation and expertise from the United Nations Special Commission, the International Atomic Energy Agency, the United Nations Secretariat, and any other relevant expertise. The panel would assess all the existing and relevant information available, including data from ongoing monitoring and verification, relating to the state of disarmament in Iraq".

5. As announced by the Chairman on 12 February 1999, the first panel was composed as follows: Ichiro Akiyama, Jacques Baute, Kaluba Chitumbo, Ron Cleminson, Rachel Davies, Jayantha Dhanapala, Charles Duelfer, Roberto García Moritán, Gennady Gatilov, Gabriele Kraatz-Wadsack, Hideyo Kurata, Liu Jieyi, Johan Molander, Jack Ooms, Daniel Parfait, GianPiero Perrone, Horst Reeps, Paul Schulte, Tom Shea, and Nikita Smidovich.

6. The panel met from 23 to 27 February and from 22 to 27 March. Taking into account paragraph 3 of document S/1999/100, the Chairman held consultations with panel participants and members of the Security Council on appropriate working methods and plans of work. The panel decided that it should assess, from a technical point of view and a broad perspective, the work of the United Nations and IAEA in Iraq in the area of disarmament/ongoing monitoring and verification of proscribed weapons. To this end, the panel considered information from a variety of sources and heard short briefings on different aspects: (I) the ongoing monitoring and verification regime; (II) the export/import

monitoring mechanism; (III) the nuclear, missile, chemical weapons and biological weapons areas; and (IV) overhead imagery.

7. In accordance with the note by the President of the Security Council, the main objective of the panel was "to make recommendations to the Security Council on how, taking into account relevant Security Council resolutions, to re-establish an effective disarmament/ongoing monitoring and verification regime in Iraq". This mandate reflects the Security Council assessment that an effective presence of inspectors on the ground remains the most effective way to provide assurance that Iraq does not retain, acquire or rebuild its proscribed weapons programmes.

II) Introductory questions

8. The phrasing of the mandate ("how... to re-establish", etc.) carries with it an implicit recognition that the task of getting inspectors back to Iraq is not self-evident. In effect, the panel has been asked to contribute to such an objective by devising technically feasible options which the Security Council may choose to implement. The panel recognized that the scope of its mandate implied that it would devise its recommendations from a technical, and not a political, point of view, while conceding that it could not ignore the political and indeed the legal context in which those deliberations were taking place. The panel deliberated against the background of discussions in the Council, where a number of proposals on how to address the present situation are still under consideration. On the one hand, a clear line had to be drawn between what is technical, and therefore germane to the panel's work, and what is political in its content, which is the exclusive province of the Security Council. On the other hand, the panel had to be conscious that some of the technical options may propitiate political consequences if the Security Council so decides.

9. In the context of the debate on the above mentioned proposals, the President of the Security Council for the month of January presented the following question to Council members: "while recognizing that there may be disarmament tasks to be carried out, wouldn't it be possible to perform those tasks, with a renewed approach, under a reinforced Ongoing Monitoring and Verification (OMV) system (with disarmament elements factored into it)?" This question helped to focus the discussions on ways to move forward in the short-term and may be viewed as being at the origin of the establishment of the panel on disarmament/ongoing monitoring and verification. The same question was presented to panel members.

10. Always bearing in mind the mandate conferred upon it by the Security Council, the panel decided that it should first achieve an understanding of the current status of disarmament/ongoing monitoring and verification in that country. Such a discussion could neither be exhaustive nor excessively detailed, but a broad overview of the work undertaken by the United Nations and IAEA in Iraq to date, including their cooperative arrangements, was considered useful.

11. A further step was to evaluate, bearing in mind the basic elements of the OMV regime, as conceived in the plans approved by resolution 715, as well as the need of ensuring the full implementation of all relevant Security Council resolutions regarding Iraq, in particular resolutions 687, 707, 715 and 1051, the possibility of addressing remaining disarmament issues/areas of uncertainty through their integration into a reinforced OMV regime. By providing a satisfactory answer to the fundamental question of whether it is feasible to factor those outstanding issues into an OMV developed to its full potentiality, while avoiding policy judgements, the panel might be enlarging the scope of options for the Security Council.

III) Disarmament

12. Panel members had it clear that it was not their objective to evaluate, in its minute detail, every single aspect of each particular proscribed weapons area. Such an assessment had been made on a number of occasions by the competent institutions in charge of the disarmament/ongoing monitoring verification work in Iraq and is included in various reports to the Security Council, which were presented to the panel as part of the "existing and relevant information available". Therefore, what follows is not an attempt to summarize such assessments (much less to substitute for existing papers) but an indication of subjects discussed, in relation to which different shades of opinion were expressed.

13. The panel heard briefings by experts from the United Nations Special Commission (UNSCOM) and the IAEA on the current status of disarmament/ongoing monitoring and verification in the four proscribed weapons areas (nuclear, missiles, chemical, biological). These briefings were concentrated on specific priority disarmament issues. In the case of UNSCOM this reflected its understanding of the desire of the Council to focus on selected important parts of the requirements of its resolutions. UNSCOM has decided to work on the basis of priority issues, setting aside other aspects such as proscribed weapons research and development activities, procurement, etc. The satisfactory resolution of these priority questions would considerably increase the level of confidence of UNSCOM's overall verification. If the priority issues are not satisfactorily resolved, then it is likely that the settlement of other outstanding disarmament issues will assume greater importance. The Iraqi Government provided the Chairman with some documentation with its views on the disarmament/ongoing monitoring and verification process. This documentation was also considered by the panel.

Nuclear Weapons

Achievements

14. The IAEA has been able, in the course of its eight years of extensive inspection activities, to develop a technically coherent picture of Iraq's clandestine nuclear programme covering the stages from the production and procurement of natural uranium compounds, through Iraq's development of enrichment processes, to the design and experimental work for the eventual weaponization of highly enriched uranium. Iraq's programme had been very well funded and was aimed at the development and production of a small arsenal of nuclear weapons, but there were no indications that Iraq had achieved its programme's objective. Most of the IAEA activities involving the destruction, removal and rendering harmless of the components of Iraq's nuclear weapons programme which to date have been revealed and destroyed were completed by the end of 1992. In February 1994, the IAEA completed the removal from Iraq of all weapon-usable nuclear material - essentially research reactor fuel. On the basis of its findings, the Agency is able to state that there is no indication that Iraq possesses nuclear weapons or any meaningful amounts of weapon-usable nuclear material or that Iraq has retained any practical capability (facilities or hardware) for the production of such material.

Current status/remaining questions

15. In the nuclear weapons area, questions remain with regard to the lack of certain technical documentation, external assistance to Iraq's clandestine nuclear weapons programme and Iraq's abandonment of its nuclear weapons programme. However, the uncertainty deriving from those few remaining concerns does not present any technical impediment to the full implementation of the IAEA's OMV plan. Iraq has yet to adopt the necessary measures to implement its obligations under relevant Security Council resolutions and enact penal laws to secure their enforcement. This issue applies to the other proscribed weapons areas as well.

Proscribed Missiles

Achievements

16. With regard to items selected as key for the purpose of the verification of the material balance of proscribed missiles and related operational assets, UNSCOM was able to destroy or otherwise account for: (a) 817 out of 819 imported operational missiles of proscribed range; (b) all declared mobile launchers for proscribed Al Hussein class missiles, including 14 operational launchers; the disposition of 9 of the 10 imported trailers used for the indigenous production of mobile launchers; and the destruction of 56 fixed missile launch sites; (c) 73 to 75 chemical and biological warheads of the declared 75 operational special warheads for Al Hussein class missiles; 83 of the 107 imported and some 80 of the 103 indigenously produced conventional warheads declared by Iraq to be in its possession at the time of the adoption of resolution 687.

17. As a means to compensate for Iraq's failure to present required evidence for the establishment of a material balance of the critical components for the indigenous production of proscribed missiles, UNSCOM has established a rough correlation between the total estimated weight of engine components and the total weight of ingots and other remnants presented by Iraq as a result of its unilateral destruction. UNSCOM has also concluded that Iraq does not possess a capability to indigenously produce either BADR-2000 missiles or assets known as the "Supergun". UNSCOM has obtained a broad understanding of Iraq's efforts to develop a missile delivery system for nuclear weapons and a detailed picture of Iraq's procurement effort for its proscribed missile programmes.

Current status/remaining questions

18. In the missiles area, the main concerns mentioned during the briefing related to the determination whether or not the current assessment of the quantity of special warheads identified among the remnants excavated accounts for all special warheads declared to have been produced by Iraq or if the declaration is indeed correct. Satisfactory resolution of the following issues was considered essential for the achievement of a satisfactory material balance: a) the reasons why no remnants of 50 conventional warheads declared as unilaterally destroyed were recovered; b) accounting for proscribed propellants claimed to have been unilaterally destroyed; c) accounting for the unilateral destruction of seven indigenously produced missiles; d) accounting for the unilateral destruction of combustion chamber/nozzle assemblies for indigenously produced missiles.

Chemical Weapons

Achievements

19. UNSCOM has supervised or been able to certify the destruction, removal or rendering harmless of large quantities of chemical weapons (CW), their components and major chemical weapons production equipment as follows: (a) over 88,000 filled and unfilled chemical munitions; (b) over 600 tonnes of weaponized and bulk CW agents; (c) some 4,000 tonnes of precursor chemicals; (d) some 980 pieces of key production equipment; (e) some 300 pieces of analytical instruments. The prime CW development and production complex in Iraq was dismantled and closed under UNSCOM supervision and other identified facilities have been put under monitoring. It was pointed out that UNSCOM has been able to establish material balances of major weapon-related elements of Iraq's CW programme only on the basis of parameters as declared by Iraq but not fully verified by UNSCOM.

20. UNSCOM has been able to make considerable progress in the verification of other CW-related activities in Iraq, among them the uncovering of Iraq's VX project, CW research and development projects, Iraq's procurement network and efforts for its CW programme. On the basis of all these findings, UNSCOM obtained a good understanding of the major parameters of Iraq's CW programme.

Current status/remaining questions

21. In the chemical weapons area it was noted during the briefing that satisfactory resolution is required especially with regard to: a) discrepancies with Iraq's declarations on the expenditure of CW munitions in the 80s, as indicated by figures contained in a document detailing consumption of special munitions by Iraq; b) evidence of 550 artillery shells filled with mustard declared to have been lost shortly after the Gulf War; c) accounting for five hundred R-400 bombs, which could be done through the verification of the disposition of the parachute tail sections of those bombs; d) Iraqi declarations on the production and weaponization of the chemical agent VX, in particular with regard to the military plans for the use of VX during various periods, the different precursors available and the synthetic routes pursued; and e) the material balance of CW production equipment.

Biological Weapons

Achievements

22. UNSCOM uncovered the proscribed biological weapons (BW) programme of Iraq, whose complete existence had been concealed by Iraq until 1995. This and subsequent work has permitted it to obtain significant insights into Iraq's biological warfare capabilities, including a broad understanding of the main delivery systems. UNSCOM has also gained a detailed, albeit incomplete, picture of Iraq's procurement activities for its biological warfare programme.

23. UNSCOM ordered and supervised the destruction of Iraq's main declared BW production and development facility, Al Hakam. Some 60 pieces of equipment from three other facilities involved in proscribed BW activities as well as some 22 tonnes of growth media for BW production collected from four other facilities were also destroyed. As a result, the declared facilities of Iraq's BW programme have been destroyed and rendered harmless.

Current status/remaining questions

24. In the biological area, Iraq's Full Final and Complete Disclosure (FFCD) has not been accepted by UNSCOM as a full account of Iraq's BW programme. A full disclosure of the scope and nature of the programme was considered outstanding by UNSCOM. The briefing indicated that this evaluation was corroborated by technical evaluation meetings called by UNSCOM including at the request of Iraq. The briefing also indicated that critical gaps need to be filled to arrive at a reasonably complete picture. It has also been recognized that due to the fact that BW agents can be produced using low technology and simple equipment, generally dual-use, Iraq possesses the capability and knowledge base through which biological warfare agents could be produced quickly and in volume.

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25. The elements presented above indicate that, in spite of well-known difficult circumstances, UNSCOM and IAEA have been effective in uncovering and destroying many elements of Iraq's proscribed weapons programs in accordance with the mandate provided by the Security Council. It is the panel's understanding that IAEA has been able to devise a technically coherent picture of Iraq's nuclear weapons programme. UNSCOM has achieved considerable progress in establishing material balances of Iraq's proscribed weapons. Although important elements still have to be resolved, the bulk of Iraq's proscribed weapons programmes has been eliminated. In this connection, reference was made to a possible "point of impasse"

in the further investigation of these issues under the current procedures which might correspond to an apparent diminishing return in recent years.

26. Although there were differences in the panel members' perception and understanding of remaining issues, including as regards their relevance to the overall verification process, it is evident that a satisfactory resolution of certain areas, in particular those identified as priority, would contribute to the overall assurance that any disarmament and/or monitoring and verification mechanism could provide. Or, in other words, there seems to be an inverse correlation between resolution of those issues by Iraq and the overall degree of intrusiveness of the regime to be implemented.

27. It has been indicated on various occasions that "some uncertainty is inevitable in any country-wide technical verification process which aims to prove the absence of readily concealable objects or activities. The extent to which such uncertainty is acceptable is a policy judgement". Both UNSCOM and IAEA have therefore been adopting a pragmatic approach which assumes that 100% of verification may be an unattainable goal.

IV) Ongoing Monitoring and Verification

28. The OMV system was conceived to provide assurance that Iraq is not undertaking proscribed activities. The plans approved by resolution 715 (docs. S/22871/Rev.1 and 22872/Rev.1) establish the mechanisms for the monitoring and verification of Iraq. The dynamic nature of these mandates implies that procedures and practices under the Plans may be continuously adjusted. Key among the tools given by the Security Council to both IAEA and UNSCOM under the Plans are full and free access at any time to all sites, facilities, areas, locations, activities,

materials and other items, including documentation, and to all persons and all information that, in the judgement of IAEA and UNSCOM, may be necessary for their monitoring activities.

Adopted procedures and practices to date

29. The IAEA's monitoring plan has been operational since August 1994. Since that time, work has continued in order to increase the scope and technology of OMV measures, although it is recognized that any OMV mechanism will always encompass a component of disarmament of varying degrees. The Agency's OMV plan is designed to give assurances as to the absence of prohibited equipment, materials and activities. The plan takes fully into account the extensive technological expertise developed by Iraq in the course of its clandestine nuclear programme. The Plan also takes into account the uncertainties referred to in paragraph 15 above and is predicated on the assumption that Iraq retains the capability to exploit, for nuclear weapons purposes, any relevant material or technology to which it may gain access in the future.

30. The design and operation, since 1994, of UNSCOM's monitoring system have been based on a number of assumptions regarding the conditions under which the Plan for OMV would be implemented. It was believed that, before proceeding exclusively to monitoring and verification activities, the Commission would receive, from Iraq, full and complete disclosures of all its proscribed activities and capabilities and that the identification and disposal of all proscribed weapons, materials and programmes would have been achieved. Based on this expectation, the way UNSCOM had been pursuing the monitoring and verification system was not designed to search for proscribed weapons and materials. This task has been carried out by UNSCOM separately through disarmament activities and investigations. In view of this "two-track" approach UNSCOM was able to conduct its monitoring activities in the least intrusive manner, consistent with the objectives for ongoing monitoring and verification set forth by the Security Council.

Current status

31. Inspectors from both the Agency and the Special Commission departed from Iraq on 16 December 1998. As a consequence, the OMV plans are not operational at this moment.

V) Relationship between disarmament and ongoing monitoring and verification

Integration, including legal aspects

32. The briefings referred to above demonstrated clearly that although disarmament and monitoring and verification address different dimensions of the broader problematic of disarmament/reacquisition of proscribed weapons, both can be implemented through the use of the same - or similar - tools. Disarmament assumes the existence of proscribed weapons and/or capabilities, which must be located, accounted for and, eventually, disposed of. The monitoring and verification system's immediate goal is to attempt to determine that proscribed activities are not being carried out. Experience has shown, however, that actions in disarmament/ongoing monitoring and verification can be mutually supportive, and that there are many similarities and complementarities between them. Both can be achieved, in an integrated fashion, through the use of on-site inspections with full access, including no-notice inspections, sample analysis, aerial surveillance, evaluation of documentation, interviews, installed monitoring equipment, or, most effectively, a combination of them.

33. Discussions in the panel have also revealed that, from a technical standpoint, the ongoing monitoring and verification is not incompatible with the continuing search for satisfactory resolution of outstanding elements from proscribed weapons programmes. It was made clear that UNSCOM's decision to

separate aspects related to monitoring from those related to disarmament had been taken at the executive level, based on certain assumptions that seemed to be warranted at the time. It was recognized, however, that it is technically possible to carry out further the resolution of remaining issues mentioned above under the framework of OMV, provided adequate arrangements are established to ensure the full exercise of the rights contemplated by the Plans. The panel recognized that, due to different degrees of confidence, more effort should be placed in areas which have caused greater concern, as seems to be the case in the biological and some chemical weapons areas. In order to be effective, the reinforced OMV system should be able not only to certify that present activities are in accordance with Security Council resolutions but also to address unresolved issues, whenever necessary. Indeed, the retention of the right to investigate any aspect of proscribed weapons programmes would be a fundamental element of the integrated system. As in the case of disarmament, cooperation by Iraq is essential.

Legal framework

34. The reinforced OMV system should be based on the full implementation of the plans for ongoing monitoring and verification approved by Security Council resolution 715 (1991), provided the rights enshrined therein and in resolutions 687, 707 and 1051 are fully exercised. The plans establish that the IAEA and UNSCOM should, through inspections and aerial overflights, as well as through the provision of information by Iraq, monitor and verify that activities, sites, facilities, material and other items, both military and civilian, are not used by Iraq in contravention of its obligations under relevant Security Council resolutions. It is understood that, for operational reasons, the full potential of UNSCOM's plan has never been explored. The existing plans provide an adequate legal framework for implementing a rigorous and effective system of monitoring and verification, and thus for integrating into it the investigation of unresolved issues regarding proscribed weapons programmes.

35. The possibility of continuing the investigation of proscribed weapons programmes under the reinforced monitoring regime is explicitly provided for in the plans. Paragraphs 22 and 23 of the plan presented by UNSCOM and 36 and 37 of the IAEA's Plan refer to the discovery of any item, including documentation, or activity in contravention of resolutions 687, 707 or of the Plan. Paragraph 24 of UNSCOM's Plan and 38 of the IAEA's Plan referred to above instruct UNSCOM and IAEA to bring to the attention of the Security Council any findings that indicate that Iraq is not in compliance with its obligations under resolutions 687 and 707. From a legal perspective, the ability to carry out specific operations aimed at clarifying certain questions and detecting if there is an attempt to retain proscribed items which escaped the destruction/removal/rendering harmless process is fully guaranteed.

Technical feasibility and necessary arrangements

36. The IAEA's OMV activities have been using essentially the same procedures and techniques initially employed to detect the presence of prohibited equipment, materials and activities. These procedures must not only credibly ensure such absence at routinely inspected locations, but also provide a significant probability of detection at other locations. Further clarification of remaining questions can therefore be integrated into the IAEA's Plan, provided the Agency is able to fully exercise the rights of access enshrined in the Plan.

37. In the case of the other proscribed weapons areas, satisfactory resolution of remaining issues under the OMV plan would require modifications in some assumptions for the operation of the OMV plan, procedures and practices that were being used to date. More specifically, changes in the basic assumptions of the OMV plan would require the strengthening of the monitoring and verification system to maintain its effectiveness so that the Security Council mandate can be carried out. As stated earlier, the OMV plan, as it was being implemented before the interruption of inspections, was based on the assumption that a fairly complete knowledge of the past would have been obtained, not having been designed to

explicitly resolve remaining disarmament issues. The positive resolution of priority issues related to proscribed activities before the starting of the monitoring and verification system would surely contribute to an increase in the degree of confidence that the system would otherwise provide. Such uncertainties, however, could be offset through a reinforced OMV, based on the assumption that Iraq has the knowledge and technical expertise to exploit, for proscribed purposes, any relevant materials or technologies which it may retain or gain access to in the future.

38. IAEA and UNSCOM have both contemplated the possibility of integrating remaining disarmament issues into their OMV plans. In paragraph 34 of its latest report (doc. S/1999/127) the Agency states that "provided that it is able to exercise its right to full and free access in Iraq, the IAEA is in a position to proceed with the full implementation of its OMV plan and, as part of that plan, to investigate further the remaining questions and concerns and any other aspect of Iraq's clandestine nuclear programme arising out of new information acquired by the IAEA".

39. UNSCOM, in turn, points out in its latest reports that "the present review of the OMV system takes into account the possibility that the mandated objective of the full accounting of Iraq's proscribed weapons and verification of Iraq's prohibited programmes will not be achieved but the Commission may, nevertheless, be required to operate its OMV system under the shadow of Iraq possibly retaining prohibited materials"(paragraph 23 of S/1999/94).

40. Panel members agreed that the adoption of a reinforced OMV might represent a refocusing and evolution of patterns of work as pursued by UNSCOM. The reinforced OMV system should make maximum use of synergies, cross checks and cross fertilizations between the activities of the four disciplines (nuclear, biological, chemical, missile) and the Export/Import Monitoring Mechanism in order

to ensure confidence in the continuing absence of proscribed activities as well as clarification and progressive resolution of disarmament issues. It was pointed out that the benefit of the integrated approach would be that all information gathered from these concurrent activities would be analyzed systematically, considered against other data and examined in a multidisciplinary context. The net effect could be to enable rapid and effective work towards confirmation of Iraq's disarmament status, provided the rights set forth in Security Council resolutions 687, 707, 715 and 1051 are fully respected.

41. Changes on the ground resulting from the adoption of a reinforced OMV would be related rather to the intensity, frequency, intrusiveness and methods than to rights, which would remain unaltered, since all actions required are already permitted under relevant Security Council resolutions.

42. Panel members acknowledge that this evolution of UNSCOM's work will have implications for its organizational structure and resourcing, which it might be premature to address in detail at this stage. However, it was considered useful to present some of the parameters under which unresolved or not sufficiently resolved disarmament issues can be integrated into OMV:

a) Full implementation of the rights enshrined in the OMV plans, particularly full access to locations, individuals and information as well as the right to implement any relevant technology;

b) Re-establishment of baselines of what Iraq had acquired and achieved in each of the proscribed weapons areas on the basis of the knowledge so far accumulated;

c) Identification of critical milestones at which any resumption of proscribed activities could be detected, as a means to address the potential consequences of possible uncertainties;

d) Further development of lists of equipment/procedures/methods and a corresponding degree of intensity/frequency/intrusiveness bearing in mind the amount of intellectual property Iraq acquired; prioritization of methodology accordingly;

e) Regular inspections of military sites;

f) Increase in the number of inspector and supporting staff, taking into account technical expertise and wide geographical representation;

g) Improvement of mobility/access through the establishment of regional centres and/or the use of fixed and rotary wing aircraft;

h) Enhancement of in-house scientific analytical capability to increase speed and independence of results;

i) Improvement of structures to promote linkages and information flows across disciplines and activities; and

j) Identification of a long-term, adequate and independent source of funding.

43. It was noted that Iraq should confirm the rights and privileges of UNSCOM and IAEA inspectors and support staff, and, consistent with past experience, confirm that the health and safety of said personnel will be protected at all times when these individuals are within the territory of Iraq.

44. Discussions on the specific question of techniques and tools were held. Although it was recognized that this debate was of a preliminary character, some time was devoted to issues related to efficiency, cost-effectiveness and the degree of intrusiveness of the different techniques. In this regard, it was noted that, although not a substitute for on-site inspections, overhead imagery may play, for instance, a very powerful role in providing indications of the presence of prohibited activities. The role of such a means in providing timely and accurate reference data to support, supplement and/or enhance inspection activities had already been

proven in Iraq. The panel concluded that overhead imagery has already played an important role in the effective implementation of the OMV plans and that it should be exploited to the limit of its technical capabilities. There would be advantages in the United Nations and the IAEA being able to derive independent conclusions therefrom.

45. The Export/Import Monitoring Mechanism would remain a critical component of the reinforced OMV. This system of information/notification would have to be reinforced and greater reliance would have to be placed in the provision of information by suppliers, particularly if conditions related to the volume of commercial transactions into Iraq are changed. In any case, the lists of dual-use equipment, the last version of which dates back to 1995, should be revised. It has been noted that, due to particularities in Iraq's programmes of weapons of mass destruction, these lists are already more comprehensive than those of the Chemical Weapons Convention and other non-proliferation arrangements, such as the Missile Technology Control Regime and the Australia Group.

46. For the reinforced OMV system to achieve its objectives, Iraqi cooperation will be necessary in particular in the sense of: a) providing immediate unobstructed access to all locations by United Nations and IAEA teams; b) not interfering with monitoring equipment; c) providing documentation to determine the legitimacy of activities under monitoring; d) providing all available information and materials related to past proscribed activities; e) ensuring access to personnel involved in such activities for interviews without interference; f) ensuring that relevant evidence is not concealed, removed or destroyed; g) ensuring access by fixed or rotary wing aircraft; h) adopting national legislation, as appropriate. At the same time, Member States are expected to cooperate fully for the effective functioning of the system.

VI) Organization and methods

General observations

47. The panel had in mind, in making its suggestions in this and other areas, that it should work within the existing legal framework for the implementation of Security Council resolutions related to proscribed weapons in Iraq. The panel also notes that there are proposals before the Security Council, which have also been mentioned during the panel meetings, that may imply changes in Security Council resolutions. It will be a matter for the Security Council to judge upon the desirability of their adoption. Nevertheless, the panel thought it worth examining adjustments in current practices and procedures within the present legal framework. The nomenclature in the following paragraphs was used in the discussions without prejudice to any future Security Council decision.

48. The panel held its discussions on this subject bearing in mind the experience accumulated during the past eight years of inspections but also the possibility of a reinforced OMV system as delineated above. In the course of debates on how to improve the operation of the system, reference was made to the desirability of reinforcing overall coordination, including within the UN system, without prejudice to a close relationship between the executive body and the Security Council. This implies the possibility of the Executive Chairman bringing any urgent matter to the attention of the Security Council. As a subordinate organ of the Security Council, the executive body derives its effectiveness and authority from this close relationship, both in terms of political supervision and of providing support for its activities.

49. In this context, suggestions were made, inter alia, with regard to the possibility of restructuring the Commission as a collegiate body. Without prejudice of the close relationship referred to in paragraph 48, the Commission could provide for independent advice, guidance and general oversight, both at expert and

diplomatic levels, on carrying out activities under the monitoring and verification plan and any problems, referred to it, that might arise in that connection. It would carry out functions entrusted to it by the Security Council, possibly including: a) consideration of any matter relating to the execution of the monitoring plan referred to it by the Security Council for advice; b) consideration of regular reports from the Executive Chairman on the conduct of operations; c) consideration of particular issues referred to it by the Executive Chairman with a view to their resolution or to a recommendation to the Security Council; d) consideration of complaints by Iraq regarding the conduct of inspections; e) establishment of rosters of experts for possible selection to serve on monitoring operations; and f) advice on personnel policy.

50. Recognizing the role of the Secretary-General in this regard, the Commission's composition would also be reviewed by the Security Council so that it possibly includes a core of technical experts; representatives from among Security Council members; the Under-Secretary-General for Disarmament Affairs and possibly other representatives of the Secretariat. It is thought that among the technical experts a representative of the IAEA and of the Organization for the Prohibition of Chemical Weapons (OPCW) might be included. In order to ensure proper liaison of the collegiate body with the Security Council, the meetings of the Commission might be presided over by a representative of a non-permanent member of the Security Council. The Commission should meet at least every three months (apart from emergency meetings).

51. Some suggestions were made that, at the operational level, the implementation of the reinforced OMV should be entrusted to a renovated UNSCOM, consistent with the provisions of such a system. This may have staffing implications that were not considered at length by the panel. It is understood that the Baghdad Monitoring and Verification Centre (BMVC) would continue to play a pivotal role and may have to be further reinforced. The renovated UNSCOM should ensure a clear United Nations identity and be guided by the principles of full independence, rigour

and transparency in order to ensure the effectiveness of its work and credibility of its results. It was felt that, at this stage, due to the amount of knowledge acquired by UNSCOM, as well as to the intrinsic interrelationship between the missile, biological and chemical weapons fields, these tasks should remain concentrated on this renovated United Nations body. Nevertheless it was noted that organizations such as OPCW might contribute, under appropriate arrangements, including through participation in the Commission. In the future, if Iraq becomes a party to the CWC, as urged in Security Council resolutions, cooperation arrangements similar to those currently associated with the work of IAEA in Iraq might be considered, provided they are consistent with mandates set forth in relevant Security Council resolutions, if the Security Council so decides.

Recruitment

52. A central component in ensuring an effective and credible system is the recruiting of staff who are technically competent, committed to the objectives of the Security Council resolutions, impartial, and, if possible, have some experience of inspections. A personnel management strategy should ensure the optimum mix of qualifications, background and of long-term and short-term staff. Without prejudice to these requirements, staff selection should also reflect the desirability of establishing broad national representation to the extent possible. Cost efficiency and technical effectiveness could be promoted by complementing permanent staff with temporary staff selected, to the extent possible, within a roster of specialists (see paragraph 49 above).

53. Appointments for one year or more should continue to be made in terms of Article 101.3 of the Charter of the United Nations. All appointees would be regarded as international civil servants subject to Article 100 of the Charter. Taking into account United Nations policy, recourse to cost-free personnel should be limited. Efforts should be made to increasing, wherever operationally possible, personnel employed directly by the United Nations. All employees should be subject

to an enforceable Special Service Agreement. This will require full cooperation from Member States.

Training

54. Considerable weight should be given to training needs with the objective of developing and reinforcing core inspection skills and competences. Training programmes should encompass both technical and cultural issues as well as relevant safety procedures. Particular emphasis should be placed on the importance of understanding national sensitivities in the course of inspections. Emphasis should be given to structural pre-inspection training. For short-term appointments, on-the-job training would be the regular practice. Inspection planning and staffing should reflect those training needs. Continuity in the field is essential.

Equipment/technology

55. Appropriate specifications should be established for all monitoring equipment, including power units, to be installed in Iraq and on arrangements for its maintenance by suitably qualified personnel. Systematic and rapid selection and independent procurement of adequate emerging monitoring technologies should be promoted, as appropriate.

Information

56. Information has been recognized as an essential component of a reinforced ongoing monitoring and verification regime, whether provided by Iraq, or generated by inspections, or from any other source, including Member States. Internal handling of information should reflect the absolute need to protect the confidentiality of operations planning and to give assurances to providers that the sources and methods are being properly protected. This requires clear procedures for receipt, handling, storage and access to sensitive information. Evaluation and

assessment of information collected should be rigorous and impartial. This can be facilitated by adopting clear analysis concepts and methodologies, and by using a modern database and computer-based analysis tools. The greater the confidence in the security culture of the organization the more information Member States are likely to provide.

57. Any information should be assessed strictly on the basis of its credibility and relevance to the mandate. The substantive relationship with intelligence providers should be one-way only, even if it is recognized that dialogue with providers may be necessary for clarifications and refinement of assessments. The OMV mechanism should not be used for purposes other than the ones set forth in Security Council resolutions.

Other practices and procedures

58. In conducting inspections or monitoring operations, effectiveness should be the primary consideration. A rigorous and comprehensive approach should be adopted to planning and in-field activities and should take into account the difficulties encountered in the past in Iraq, including instances of obstruction and/or deception. At the same time unnecessary confrontation or disproportionate reactions should be avoided.

59. Cooperative arrangements among different disciplines should be promoted through the development of structures to improve linkages and information flows across disciplines and activities. The composition of inspection/monitoring teams should reflect mission requirements. Confidentiality should be maintained during all stages of the planning and execution phases. Within the limits dictated by that requirement, inspectors should be appropriately briefed on the broader objectives of the project in which their activities are inserted and should be given access to the reports of the missions to which they have contributed.

60. The issue of relations with the media was raised. The panel found that, ideally, there should be a single point of contact with the press, which could benefit from the expertise of the existing UN and/or IAEA public relations machinery. Public comment by the verification entity and its personnel should be limited and restricted to the factual. Political evaluations or comments that carry obvious political implications should be left to the Security Council.

VII) CONCLUSIONS/RECOMMENDATIONS

61. The panel carried out its work bearing in mind the objective of presenting a meaningful contribution to the Security Council on how to re-establish a UN presence in Iraq in the area of disarmament/ongoing monitoring and verification. The panel considered that refocusing or "relensing" the approach towards disarmament/ongoing monitoring and verification, without departing from the existing framework of rights and obligations laid down in Security Council resolutions adopted under Chapter VII of the Charter, might offer the opportunity to enlarge the scope of policy options for the Security Council. To this end, the panel concentrated a great part of its work on discussing the technical feasibility of a reinforced OMV system capable of addressing, through integration, remaining unresolved disarmament issues. The panel concluded that such a reinforced OMV system, which should include intrusive inspections and investigation of relevant elements of past activities, is viable.

62. The framework for this system is well-known, encompassing Security Council resolutions 687, 707, 715 and 1051. In fact, what is being called a reinforced OMV is the OMV system itself as conceived in the plans approved by resolution 715 developed to its full potentiality. The panel points out that there is no need to change resolution 715 to that effect.

63. Several suggestions were made in relation to questions pertaining to organization and methods of work, including institutional arrangements, bearing in mind the reinforced OMV system. They are outlined in chapter VI of this report. The panel recommends that the Security Council devotes appropriate attention to these ideas.

64. The panel notes that the longer inspection and monitoring activities remain suspended, the more difficult the comprehensive implementation of Security Council resolutions becomes, increasing the risk that Iraq might reconstitute its proscribed weapons programmes or retain proscribed items. A materialization of such a risk that is attributable to the absence of inspections would have extremely negative consequences for the credibility of international non-proliferation efforts in general, and for the credibility of the United Nations and IAEA in particular.

65. It has been repeatedly pointed out that UNSCOM's and IAEA's current inability to implement their mandates in Iraq renders them unable to provide any assurance that Iraq is in compliance with its obligations under Security Council resolutions and that it is essential that inspection teams return to Iraq as soon as possible. The current absence of inspectors has exponentially increased the risk of compromising the level of assurance already achieved, since it is widely recognized that the re-establishment of the baseline will be a difficult task. The loss of technical confidence in the system could become irretrievable. The panel considers that the status quo is not a practical alternative and recommends that efforts be made with a view to restoring an international inspection regime in Iraq that is effective, rigorous and credible.

66. The effectiveness of the monitoring and verification system depends on its being comprehensive and intrusive. Rigorous implementation is critically dependent upon the full exercise of the rights of full and free access set forth in relevant Security Council resolutions. The monitoring and verification system is an

integral whole that can be meaningfully implemented only in its entirety. At the same time, mandates should be carried out objectively in a technically competent and thorough manner with due regard to Iraqi sovereignty, dignity and sensitivities, including religious and cultural ones, as well as those related to commercial confidentiality.

67. Given the difficulties experienced in the past, this will require firm and active support by the Security Council for the implementation of the reinforced OMV system. Implementation of the OMV system is predicated on Iraqi cooperation. Ensuring appropriate cooperation by Iraq means that, in one way or another, Iraq will have to be engaged by the Security Council, sooner rather than later. Of course the OMV system cannot be conceived as an enticement for Iraq to invite it into its territory. Indeed the reinforced OMV would be, if anything, more intrusive than the one so far practiced. It is in the hands of the Security Council to devise ways of ensuring that Iraq accepts such monitoring and verification.

68. In summary, the panel agreed on the possibility of an integrated system that is a reinforced OMV within the existing legal framework of resolutions 687, 707, 715 and 1051 as well as the Memorandum of Understanding of 23 February 1998, which would be capable of addressing the outstanding disarmament issues. Some of the parameters necessary for the implementation of such a system were outlined in relevant chapters of this report. They will surely need further elaboration, once the suggested approach is accepted by the Security Council. However, even the best system would be useless if it were to remain a blueprint on paper only. To be effective, any system has to be deployed on the ground, which is impossible without Iraqi acceptance. How this acceptance will be obtained is the fundamental question before the Security Council.

Annex II

REPORT OF THE SECOND PANEL ESTABLISHED PURSUANT TO THE NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL OF 30 JANUARY 1999 (S/1999/100), CONCERNING THE CURRENT HUMANITARIAN SITUATION IN IRAQ

1. **The panel on the current humanitarian situation in Iraq, established pursuant to the Note by the President of the Security Council of 30 January 1999 (S/1999/100), is submitting its report to the Security Council in accordance with paragraphs 1,2,3 and 5 of the aforementioned note.**

I. Mandate, composition, working methods and plans of work

2. On 30 January 1999 the Security Council decided that it would be useful to establish three separate panels on Iraq and to receive recommendations from them no later than 15 April 1999. In paragraph 2 of document S/1999/100, the Security Council invited Ambassador Celso L. N. Amorim of Brazil to chair each of the panels.

3. The second panel on humanitarian issues in Iraq was constituted in the context of increasing concern, among Security Council members, over the humanitarian situation in Iraq. Its terms of reference were defined in paragraph 5 of document S/1999/100, which reads as follows: "the second panel, on humanitarian issues, would involve the participation and expertise from the Office of the Iraq Programme, the Secretariat of the Committee established by Security Council resolution 661 (1990), and the United Nations Secretariat. This panel would assess the current humanitarian situation in Iraq and make recommendations to the Security Council regarding measures to improve the humanitarian situation in Iraq".

4. As announced by the Chairman on 12 February 1999, the second panel was composed of Messrs. Staffan de Mistura, Benon Sevan, Joseph Stephanides and Sérgio Vieira de Mello. The panel met on 19, February and on 1, 2, 5, 10, 19 and 29 March. Taking into account paragraph 3 of document S/1999/100, the

Chairman held consultations with panel participants and members of the Security Council on appropriate working methods and plans of work.

5. In addition to the official reports and the data made available by the Office of the Iraq Programme (OIP), the panel considered information from a variety of sources. Written submissions were received from the Food and Agriculture Organization of the United Nations (FAO), United Nations Development Programme (UNDP), United Nations Educational Scientific and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Office for Project Services (UNOPS), World Health Organization (WHO), World Food Programme (WFP), the Special Rapporteur of the UN Commission on Human Rights, the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, the European Community Humanitarian Office and the Middle East Council of Churches. The panel heard briefings by the United Nations Humanitarian Coordinator for Iraq, Mr. Hans Von Sponeck (UNOHCI), the Special Envoy of the Secretary-General for Iraq, Mr. Prakash Shah and the Permanent Observer of the Arab League, Ambassador Hussein Hassouna as well as by Representatives of the Office for the Coordination of Humanitarian Affairs (OCHA), the Department of Economic and Social Affairs, UNDP, UNESCO, UNICEF, UNOPS, WHO, WFP and the United Nations independent oil monitors (Saybolt). Several UN agencies provided the panel with updated versions of their original submissions and UNOHCI forwarded a document with an overview on social conditions in Iraq, containing sixteen papers prepared by UN Agencies and Programmes present in Iraq dealing with topics such as the psycho-social wellbeing of children, mental health, poverty trends, the disabled, the elderly, among others.

6. Time constraints and other factors did not allow for a visit to Iraq to take place. In the view of panel members, three of whom had spent considerable time in Iraq and were therefore familiar with the local environment, this did not prevent them from fulfilling their responsibilities in accordance with the panel's mandate.

II. Analytical perspective

7. On the basis of the Note by the President of the Security Council, the panel proceeded to evaluate the social and economic indicators of Iraq which are relevant to the humanitarian situation. The panel found that an appropriate assessment should not limit itself to presenting a static picture but should seek to identify trends. Such an exercise would involve a comparative analysis between the present situation and the one that prevailed before the events of 1990-91. In this context, it was noted that in the previous decade, the Iran-Iraq war had already taken a heavy toll on Iraqi society.

8. It was agreed that the assessment would be based on a variety of human development indicators from the most reliable sources available and also reflect, to the extent possible, a qualitative dimension of the humanitarian situation in Iraq. The panel sought to provide the Security Council with a synthesis of the information reviewed, without attempting to duplicate the work being undertaken in the context of the forthcoming assessment of the implementation of the humanitarian programme pursuant to resolution 986 (1995), to be submitted by the Secretary-General by late April 1999.

9. A conceptual distinction must be drawn between deprivations which affect the coping mechanisms or the survival of a population in a given region or country as a result of natural or man made disasters - which are therefore qualified as matters of humanitarian concern - and other situations in which low social and economic indicators are treated in the framework of development assistance. In this context, it was felt that the examination of the social and economic decline of Iraq as a humanitarian issue cannot be dissociated from the cumulative impact that widespread war damage and prolonged economic sanctions have had on the Iraqi population's living conditions.

10. Data made available to the panel were considered generally reliable, as they were undersigned either by UN agencies or other credible sources. It was noted

that the distribution of humanitarian supplies was being observed by hundreds of foreign humanitarian workers, with UN agencies and others having become increasingly apt at detecting distortions and exaggerations. Broadly speaking, the panel considered that the information it was provided with converged and formed a coherent picture.

III. Assessment of the humanitarian situation: synthesis of the information reviewed.

A) Iraq before the events of 1990-91.

11. According to the information presented to the panel, at the end of the last decade Iraq's social and economic indicators were generally above the regional and developing country averages. GDP in 1989 stood at 75.5 billion for a population of 18.3 million. GDP growth had averaged 10.4% from 1974 to 1980. By 1988 GDP per capita totaled 3.510 US dollars. The concerted push for economic growth from the mid-seventies onward had benefited the country's infrastructure. As pointed out by "the Economist Intelligence Unit" (Iraq Country Profile 1998-99), even during the 1980-88 war with Iran, the road and railway network were expanded. UNDP indicates that although power stations had been targeted by the Iranian air force during the Iran-Iraq war, in 1990 there were 126 power station units capable of generating 8.903 mw. With oil accounting for 60% of the country's GDP and 95% of foreign currency earnings, Iraq's economy was heavily dependent on the external sector and sensitive to oil price fluctuations. Such dependence on oil exports would subsequently expose Iraq to a high degree of vulnerability to sanctions. In the early 1980's Iraq had been producing as many as 3.5 million barrels per day (BPD), but that amount declined to 2.8 million by 1989.

12. Up to 1990, domestic food production represented only one third of total consumption for most essential food items, with the balance covered by imports. As highlighted by FAO, at that time Iraq had one of the highest per capita food

availability indicators in the region. Dietary energy supply averaged 3.120 kilo calories per capita/per day. Due to its relative prosperity Iraq had the capacity to import large quantities of food, which met up to two thirds of its requirements at an average estimated cost of 2.5 billion US dollars a year, although in poor production years the food bill could rise to 3 billion.

13. According to WHO, prior to 1991 health care reached approximately 97% of the urban population and 78% of rural residents. The health care system was based on an extensive expanding network of health facilities linked up by reliable communications and a large fleet of service vehicles and ambulances. Health care emphasized curative aspects, but a set of active public health programmes complemented it through immunization and control of insect borne diseases. A major reduction of young child mortality took place from 1960 to 1990, with the infant mortality rate at 65 per 1.000 live births in 1989 (1991 Human Development Report average for developing countries was 76 per 1.000 live births). UNICEF indicates that a national welfare system was in place to assist orphans or children with disabilities and support the poorest families.

14. As described by UNICEF, the Government of Iraq made sizable investments in the education sector from the mid-1970s until 1990. According to UNESCO, educational policy included provision for scholarships, research facilities and medical support for students. By 1989 the combined primary and secondary enrollment ratio stood at 75% (slightly above the average for all developing countries at 70%, according to the Human Development Report for 1991) Illiteracy had been reduced to 20% by 1987. While Iraq's indicators were inferior to that of other Arab countries such as Egypt, education accounted for over 5% of the state budget in 1989, above the developing country average of 3.8% (cf. UNDP Human Development Reports).

15. Before 1991 the South and Center of Iraq had a well developed water and sanitation system comprising over two hundred water treatment plants ("wtp's") for urban areas and 1200 compact wtp's to serve rural areas, as well as an extensive distribution network. WHO estimates that 90% of the population had access to an

abundant quantity of safe drinking water. There were modern mechanical means of collection and sanitary disposal.

16. The brutal campaign waged by the Iraqi Government against the Kurdish rebels in the North, had constituted the main issue of humanitarian concern in Iraq prior to the events of 1990-91. Aspirations among the Kurdish population of Northern Iraq for autonomy had already resulted in periods of open revolt in 1960-75 and 1983-88. Landmines had been used as early as 1965. According to figures provided by UNOPS, the conflict and the forced depopulation of over 4.800 rural villages and the subsequent mining of a majority of the villages or their surroundings resulted in a known mined area which would come to reach over 212 square kilometers in the 1990's, with casualty rates of 4-10 injured or killed per month.

B) Aftermath of the Gulf War.

17. After the Gulf War and under the effect of sanctions it is estimated that Iraq's GDP may have fallen by nearly two-thirds in 1991, owing to an 85% decline in oil production and the devastation of the industrial and services sectors of the economy (source: "the Economist country profile 1998-99"). Agricultural growth has since been erratic and manufacturing output has all but vanished (same source). According to figures provided by UNFPA per capita income fell from 3.416 US dollars in 1984 to 1,500 in 1991 and has decreased to less than 1.036 in 1998. Other sources estimate a decrease in per capita GDP to as low as 450 US dollars in 1995 (Financial Times, September 11 1995).

18. As mentioned by UNFPA, the maternal mortality rate increased from 50/100.000 live births in 1989 to 117/100.000 in 1997. The under-five child mortality rate increased from 30.2/1000 live births to 97.2/1000 during the same period. Although figures for infant deaths are based on estimates that may involve a margin of error, the trend is one of sharp increases. The Population Division of DESA calculates that the infant mortality rate rose from 64/1.000 births in 1990 to 129/1.000 in 1995 (the latest Human Development Report sets the average infant mortality rate for Least Developed Countries at 109/1.000). Low birth weight

babies (less than 2.5 kg) rose from 4% in 1990 to around a quarter of registered births in 1997, due mainly to maternal malnutrition. UNFPA and other sources such as the International Federation of the Red Cross and Red Crescent Societies believe that as many as 70% of Iraqi women are suffering from anemia.

19. The dietary energy supply had fallen from 3.120 to 1.093 kilo calories per capita/per day by 1994-95. The prevalence of malnutrition in Iraqi children under five almost doubled from 1991 to 1996 (from 12% to 23%). Acute malnutrition in Center/South rose from 3% to 11% for the same age bracket. Results of a nutritional status survey conducted on 15.000 children under 5 years of age in April 1997 indicated that almost the whole young child population was affected by a shift in their nutritional status towards malnutrition (Nutritional Status Survey of Infants in Iraq, UNICEF November 7 1998). WFP indicates that according to estimates for July 1995, average shop prices of essential commodities stood at 850 times the July 1990 level.

20. In addition to the scarcity of resources, malnutrition problems also seem to stem from the massive deterioration in basic infrastructure, in particular in the water-supply and waste disposal systems. The most vulnerable groups have been the hardest hit, especially children under five years of age who are being exposed to unhygienic conditions, particularly in urban centers. The WFP estimates that access to potable water is currently 50% of the 1990 level in urban areas and only 33% in rural areas. The absence of basic health education is leading to inappropriate infant and child care and breastfeeding practices. One briefing pointed to the Government's responsibility in the promotion of an ill-advised decline in breastfeeding.

21. Since 1991, hospitals and health centers have remained without repair and maintenance. The functional capacity of the health care system has degraded further by shortages of water and power supply, lack of transportation and the collapse of the telecommunications system. Communicable diseases, such as water borne diseases and malaria, which had been under control, came back as an epidemic in 1993 and have now become part of the endemic pattern of the precarious health situation, according to WHO.

22. School enrollment for all ages (6-23) has declined to 53%. According to a field survey conducted in 1993, as quoted by UNESCO, in Central and Southern governorates 83% of school buildings needed rehabilitation, with 8.613 out of 10.334 schools having suffered serious damages. The same source indicated that some schools with a planned capacity of 700 pupils actually have 4500 enrolled in them. Substantive progress in reducing adult and female illiteracy has ceased and regressed to mid-1980 levels, according to UNICEF. The rising number of street children and children who work can be explained, in part, as a result of increasing rates of school drop-outs and repetition, as more families are forced to rely on children to secure household incomes. Figures provided by UNESCO indicate that drop-outs in elementary schools increased from 95.692 in 1990 to 131.658 in 1999.

23. The accelerating decline of the power sector has had acute consequences for the humanitarian situation. The total remaining installed capacity today is about 7.500 mw, but inadequate maintenance and poor operating conditions have reduced the power actually generated to about half that figure at 3.500 mw. UNDP analysis points out that aging equipment and the continuing effects of war damage have caused deterioration at nearly every level. In spite of a general decline in economic activity, demand currently exceeds supply by at least 1.000 mw, particularly during the peak summer load. Power shortages have consequently worsened to up to 6 hours a day since July 1998.

24. The shortage of electricity has been particularly visible in some parts of the Northern region, where this failure has adversely affected the water supply and health services. Two hydropower stations at Dokan and Derbendikhan, which together have a 649 mw capacity, constitute the only source of power for the Northern governorates. Military hostilities have taken a toll on the transmission system on a countrywide basis. The distribution system has also deteriorated due to poor maintenance and overloading. Almost all automatic control, most remote control and many of the protection devices are malfunctioning.

C) The qualitative dimension.

25. Along with the quantitative input provided by many of the written submissions and oral briefings, other considerations were presented to the panel regarding the cumulative effects of sustained deprivation on the psycho-social cohesion of the Iraqi population. While this information was not necessarily presented in a systematic way, the following aspects were frequently mentioned: increase in juvenile delinquency, begging and prostitution, anxiety about the future and lack of motivation, a rising sense of isolation bred by absence of contact with the outside world, the development of a parallel economy replete with profiteering and criminality, cultural and scientific impoverishment, disruption of family life. WHO points out that the number of mental health patients attending health facilities rose by 157% from 1990 to 1998 (from 197.000 to 507.000 persons).

26. The cumulative effect of the sanctions regime and economic decline on the social fabric of Iraq was particularly evident to the first hand observers who addressed the panel either orally or in writing. While WHO mentioned the extreme isolation of the Iraqi scientific community and its outdated expertise, the ICRC observed that medical training is no longer guaranteed and skills are being lost. UNICEF spoke of a whole generation of Iraqis who are growing up disconnected from the rest of the world. UNESCO commented that children between 5 and 15 years of age were the most affected. According to the Humanitarian Coordinator in Iraq, unemployment and low salaries were forcing Iraqis with higher levels of education to abandon jobs as teachers or doctors and to either emigrate or search for employment as taxi drivers or security guards etc. adding to the problems in the areas of health and education.

27. The dependence of the Iraqi population on humanitarian supplies had increased Government control over individual lives to the detriment of personal initiative and self-reliance. Constraints on the performance of the Hadj, added to the sense of frustration, particularly in a context of growing religious fervor, possibly associated with the material deprivations and lack of opportunity of the present situation. The deterioration in Iraq's cultural life and institutions was also noted.

D) The humanitarian programme established by resolution 986 (1995).

28. In April of 1995 the Security Council adopted resolution 986, which was intended "as a temporary measure to provide for the humanitarian needs of the Iraqi people until the fulfillment by Iraq of the relevant Security Council resolutions". This initiative came to be known as the "oil for food" programme. It took one year for the Government of Iraq to agree to the implementation of the programme. The humanitarian programme established by resolution 986 (1995) is totally financed from revenue generated by the sale of Iraqi oil, and in that sense does not constitute humanitarian aid , such as the assistance which is financed bilaterally or multilaterally. Upon recommendation by the Secretary-General, Security Council Resolution 1153 (1998), adotped in February 1998, raised the authorized ceiling for Iraqi oil sales from 2 billion up to 5.2 billion US dollars for each 180 day period, out of which approximately 3.4 billion would be made available to the humanitarian programme, after deductions pursuant to the relevant provisions of paragraph 8 of resolution 986 (1995). In addressing the impact of the humanitarian programme pursuant to resolution 986 (1995) on the Iraqi population, the panel wished to clarify that its views do not attempt to summarize, evaluate and much less substitute for the regular reporting by the Secretary-General on the subject.

29. The adoption of the "oil for food" programme has played an important role in averting major food shortages in Iraq and to a considerable extent has helped to alleviate the health situation, especially in the North. Since the inception of the programme, the extent of malnutrition seems to have stabilized in the more populous Center/South, albeit at an insufficient caloric level, while in the Northern governorates the situation has actually improved somewhat. Under Phase V of that programme food imports account for 1.05 billion US dollars (out of a total of 1.79 billion available for all humanitarian supplies). The objective of providing the population with a basic caloric food basket of 2.300 kilo-calories/per person/ per day, is yet to be met, with the current intake closer to a level of 2.030 kilo-calories, according to the WFP. Prior to the start of the implementation of the programme, the average kilo-calorie intake had fallen to approximately 1.300. The differential reduction in the North is due in part to higher per capita allocations of the 986

programme, especially in agriculture, water and sanitation and education. Several UN agencies as well as the Humanitarian Coordinator in Iraq pointed to the fact that the unavailability of a cash component for the South further exacerbates these disparities.

30. Results of a nutritional status survey of infants attending routine immunization sessions at primary health centers throughout Central and Southern Iraq conducted in October 1997, and again one year later, reveal little change in the nutritional status since the beginning of the programme established by Security Council resolution 986 (Nutritional Status Survey at Primary Health Centers during Polio National Immunization Days in Iraq, UNICEF November 7, 1998). According to the FAO, the survey showed signs that infant feeding patterns may have deteriorated, and that children and younger male adults remained subject to significant levels of malnutrition. As mentioned by WFP, the introduction of the 986 food ration in 1997 led to a decrease in prices of food items found in the ration. Prices of non-ration food items such as meat and eggs, however, remain prohibitively high.

31. The collapse of the irrigation system and the introduction of the oil-for-food programme have prompted the Government to withdraw from agriculture (the Economist Intelligence Unit, country profile Iraq, 1998-99). A recent outbreak of foot and mouth disease reported by the Department of Animal Health is assumed to have affected approximately one million cattle and sheep and is causing high mortality among offspring. Iraqi allegations that the laboratory producing the vaccine was forced to halt its activities when the United Nations Special Commission (UNSCOM) destroyed its equipment are contested by the Commission. FAO points out that even if sufficient vaccines could be made available, which is unlikely, trucks and cold storage units are also required to contain the spread of the disease. Moreover, as indicated by FAO, the provision of pesticides and herbicides through the programme remains limited, at less than 10% of the needs. By contrast, in Northern Iraq the Security Council 986 programme had a more positive impact, even if the free distribution of wheat flour has negatively affected the local wheat growers by depressing prices.

32. The flow of medicines and medical supplies under Security Council resolution 986 as from May 1997 increased availability of such supplies to health institutions and people. As a result the quality of health has improved somewhat, but the insufficiency of funds has not allowed for significant improvement in the environment in which health care is provided nor has there been a renewal of basic equipment. Preventive activities are suffering from lack of communication and transport. The environmental risks of water borne communicable diseases, primarily diarrhea, but also malaria and leishmaniasis continue to be of great concern. There is a continuing threat of typhoid and cholera outbreaks. Central warehouses and warehouses in the Northern Governorates have deteriorated over time, and lack handling equipment and the minimum required tools for effective management of large quantities of supplies. A recent study quoted by WHO indicates that the central warehouses are operating at less than 20% of previous capacity.

33. In the Northern governorates the availability of equipment, trained staff as well as drugs and supplies have contributed to substantially increase patient attendance. There seems to be a decline in some infectious diseases such as measles and better control over polio, although documentation is only tentative due to lack of records for preceding years. Water and sanitation have also improved in the North, with renovated as well as new systems established under the "oil for food" programme.

34. According to UNDP, there has been a slight recovery of the Iraqi power generating capacity in 1997 and 1998, which seems to reflect the results of the implementation of the 986 programme. However it was estimated that 7 billion US dollars would be required to rehabilitate the power system country-wide.

35. In the field of de-mining, UNOPS has been able to deal with 2.459 patients and to clear 362.249 square meters by destroying 2.263 mines and unexploded ordnance. General problems persist, however, in the form of delays and other difficulties in the importation of equipment, a degree of indifference of the authorities toward the mine problem and a lack of a central mines action body at local and national Government level. Although there are reports of humanitarian

problems deriving from the presence of mines in parts of Iraq not covered by the UNOPS programme, so far the Government has not shown an inclination to request assistance for de-mining efforts in other regions.

36. Certain reports call attention to the fact that rural areas have been suffering more acutely from insufficiencies of unpolluted water supplies. Concern has been expressed among others by the Secretary-General and by the Special Rapporteur on Iraq of the Human Rights Commission over the slow pace of distribution of medicines and medical supplies by the Government. As of 31 January 1999, approximately 275 million US dollars worth of medicines and medical supplies had accumulated in warehouses, awaiting distribution by the Government.

37. While there is agreement that the Government could do more to make the "oil for food" programme work in a better and more timely fashion, it was not clear to what extent the problems encountered could be attributed to deliberate action or inaction on the part of the Iraqi Government. It is generally recognized that certain sectors such as electricity work smoothly while drug supplies suffer from delays in distribution. But mismanagement, funding shortages (absence of the so called "cash component") and a general lack of motivation might also explain such delays. While food and medicine had been explicitly exempted by Security Council resolution 661, controls imposed by resolution 986 had, at times, created obstacles to their timely supply.

38. It was noted that recent power cuts, which can last up to 10 hours a day, have been affecting humanitarian efforts in general, while the security situation has imposed additional constraints on the activities of humanitarian workers. The ICRC, which remained present in Baghdad and pursued its normal activities during the December 1998 air strikes, stepped up its support for treating the war wounded (over 200 casualties were seen by its delegates) and assisted with repairs to a hospital which suffered blast damage when three missiles fell nearby. Emergency assistance was also provided by the ICRC in the region of Basrah at the end of January 1999, when missiles hit areas inhabited by civilians.

39. Information reviewed by the panel indicated that while the humanitarian programme established by resolution 986 had clearly contributed to prevent a

steadier decline in certain indicators than would have otherwise been the case, particularly in terms of nutrition, written submissions and oral presentations to the panel converged in recognizing the inherent limitations of such efforts in the medium term. The WFP considers that food imports alone could not address the problem of malnutrition in the absence of a drive to rehabilitate the infrastructure, especially as regards health care and water/sanitation.

40. Although Iraq is exporting more oil than ever since 1991, revenue remained insufficient due to a negative correlation linking low oil prices, delays in obtaining spare parts for the oil industry and general obsolescence of oil infrastructure. As has been pointed out by the OIP, the present ceiling of 5.2 billion US dollars is not being met, with exports generating a maximum of 3.1 billion dollars. The oil price question could not be ignored, as every extra barrel of oil pumped by Iraq exerted downward pressure on the world price. The spare parts needed were out of date and hard to acquire, and imports would probably not allow Iraq to increase its present production of 2.5 million BPD before March 2000. Moreover, the current strategy of squeezing maximum production out of the existing facilities would not ensure a sustainable increase in financial returns, while posing serious environmental and worker hazards and causing additional infra-structure damage.

41. According to the United Nations independent oil monitors (Saybolt), by March 2000 sufficient spare parts will have arrived to increase Iraq's output somewhat. In their opinion, however, further increases in production would require capital investment of a much greater magnitude than was possible under the "oil for food" initiative. It is estimated that it would take approximately 1.2 billion US dollars to ensure a gradual and sustainable increase in the production of crude oil in Iraq so as to allow for production levels to reach 3.000.000 BPD (see the Report of the Group of Experts established pursuant to paragraph 12 of Security Council resolution 1153 (1998). The full rehabilitation of Iraq's oil industry, however, would require several billion dollars, as pointed out by the Saybolt representative to the panel.

42. It was acknowledged that factors independent from the effectiveness of the humanitarian efforts to assist the Iraqi population could help to improve the

situation, such as a sustained rise in international oil price levels. However, in order for Iraq to aspire to social and economic indicators comparable to the ones reached at the beginning of the decade humanitarian efforts of the kind envisaged under the "oil for food" system alone would not suffice and massive investment would be required in a number of key sectors, including oil, energy, agriculture and sanitation. Finally, it was pointed out that if and when sanctions are lifted, it will take a long time before the infrastructure is repaired and the economy recovers.

IV. Observations and recommendations.

43. The data provided to the panel point to a continuing degradation of the Iraqi economy with an acute deterioration in the living conditions of the Iraqi population and severe strains on its social fabric. As summarized by the UNDP field office, "the country has experienced a shift from relative affluence to massive poverty". In marked contrast to the prevailing situation prior to the events of 1990-91, the infant mortality rates in Iraq today are among the highest in the world, low infant birth weight affects at least 23% of all births, chronic malnutrition affects every fourth child under five years of age, only 41% of the population have regular access to clean water, 83% of all schools need substantial repairs. The ICRC states that the Iraqi health-care system is today in a decrepit state. UNDP calculates that it would take 7 billion US dollars to rehabilitate the power sector country-wide to its 1990 capacity.

44. The North of Iraq is clearly doing better than the Center/South for a variety of reasons. The per capita allocation of funds under the 986 programme is higher, distribution of food and medicine through UN agencies is comparatively more efficient than distribution by the Government, and the Northern border is more permeable to embargoed commodities than the rest of the country. At the same time, it is noted that the number of internally displaced persons in need of assistance in the North remains high, at approximately 500.000, compared with

80.000 in the Center/South. Although the historic vulnerability of the North, as recognized in paragraph 8 (b) of resolution 986 (1995) would seem to justify the special attention it receives, it is a matter of concern that the situation in the Center/South is, in general terms, comparatively worse - a circumstance which most UN agencies felt should not be overlooked. It was also noted, in this context, that the territorial integrity and sovereignty of Iraq has been consistently upheld by Security Council resolutions.

45. Although Member States should not shun their collective responsibility in the face of acute Iraqi humanitarian needs, this does not exempt the Government of Iraq from its own responsibilities in providing relief to its citizens, given its unsatisfactory performance in certain areas – as noted in Section III of this report – nor can Iraq's original responsibility for the current situation be ignored. At the same time, it is the panel's view that, under current conditions the humanitarian outlook will remain bleak and become more serious with time. Even if not all suffering in Iraq can be imputed to external factors, especially sanctions, the Iraqi people would not be undergoing such deprivations in the absence of the prolonged measures imposed by the Security Council and the effects of war.

46. Due to a substantial shortfall in revenue for the implementation of approved distribution plans, the "oil for food" humanitarian programme established by the Security Council has not been able to achieve fully its objectives. But even if all humanitarian supplies were provided in a timely manner, the humanitarian programme implemented pursuant to resolution 986 (1995) can admittedly only meet but a small fraction of the priority needs of the Iraqi people. Regardless of the improvements that might be brought about in the implementation of the current humanitarian programme - in terms of approval procedures, better performance by the Iraqi Government, or funding levels - the magnitude of the humanitarian needs is such that they cannot be met within the context of the parameters set forth in resolution 986 (1995) and succeeding resolutions, in particular resolution 1153 (1998). Nor was the programme intended to meet all the needs of the Iraqi people.

47. Given the present state of the infrastructure, the revenue required for its rehabilitation is far above the funding level available under the 986 programme. In light of the near absolute dependence of Iraq on oil exports to generate foreign exchange, the precarious state of the oil industry infrastructure, if allowed to deteriorate further, will have disastrous effects on the country's ability to cover the costs for basic humanitarian needs. Irrespective of sanctions, low oil prices remain an important constraint on the availability of funds, further underscoring the importance of exploring alternative sources of funding. Although the full impact of the recent decision of oil producing countries to reduce output could not be factored into this report and would warrant further analysis, it is noted by the panel that current trends, which point to a gradual increase in oil prices, could benefit the implementation of the programme.

48. The fact that basic humanitarian needs are being met through hand-outs does not contribute to stimulate the economy and has an indirect negative impact on agriculture, while increasing State control over a population whose private initiative is already under severe constraints of an internal and external nature.

49. The gravity of the humanitarian situation of the Iraqi people is indisputable and cannot be overstated. Irrespective of alleged attempts by the Iraq authorities to exaggerate the significance of certain facts for political propaganda purposes, the data from different sources as well as qualitative assessments of bona fide observers and sheer common sense analysis of economic variables converge and corroborate this evaluation.

50. However, the panel remained fully cognizant of the fact that it is up to the Security Council to decide whether the economic sanctions imposed on Iraq should be maintained, modified or lifted in light of other interrelated aspects and broader political considerations that were beyond its mandate.

51. Having in mind these limitations, the panel is proposing several recommendations it believes may lead to incremental improvements. Some of these could be contemplated within the existing framework of Security Council resolutions and legal arrangements, while others might require adjustments in the present legal framework, without departing from its basic philosophy.

* * * * * * *

52. The panel wishes to call attention to a number of specific suggestions for improvements in the implementation of the humanitarian programme pursuant to resolution 986 (1995) from different UN agencies and programmes, especially with regard to nutrition, health and education. The panel recommends that these suggestions, as well as others forwarded through the UNOHCI on the social overview be borne in mind by the OIP in the context of its ongoing efforts to improve the "oil for food" initiative, within the mandate it was given by the Security Council.

53. Particular attention should be given to the following set of suggestions which are presented as recommendations for consideration by the Security Council, on the one hand, and recommendations addressed to the Government of Iraq, on the other.

A) Additional revenue.

54. The question of securing additional funding to finance humanitarian efforts is of paramount importance, as virtually all submissions to the panel underlined the insufficiency of present levels of revenue to deal with pressing humanitarian needs. Having acknowledged the link between the gradual deterioration of the humanitarian situation and the degradation of Iraq's oil production facilities, as well as the deterioration in basic infrastructure in health/sanitation and power generation, among other sectors, the panel proposes that the Security Council consider a combination of the following measures.

(i) Notwithstanding the current situation of the oil industry, as indicated in paragraphs 41-42 above, the panel recommends lifting the ceiling of allowable oil exports from Iraq and facilitating the speedy provision of the necessary spare parts

to enable Iraq to increase its export capacity, on the understanding that the United Nations would continue to closely monitor all oil export outlets at Mina al-Bakr and Zackho on the Iraq-Turkey border as well as at Ceyhan, Turkey. Since it is recognized that the lifting of the ceiling in itself would have no automatic impact on the generation of additional revenue, it is suggested that this measure be coupled with one or both of the two following recommendations.

(ii) Authorizing bilateral production sharing agreements between the Government of Iraq and foreign oil companies. Under such arrangements – which would be strictly monitored by the United Nations – foreign companies would be authorized by the Security Council Committee established pursuant to resolution 661 (1990) to import requisite oil spare parts and equipment in order to increase Iraq's oil production and export capacity. With foreign companies supplying maintenance and related equipment as part of their production sharing agreement, up to 300 million US dollars could be freed for the acquisition of humanitarian supplies, out of the funds earmarked for oil spare parts through the "oil for food" programme. Unless the Security Council takes different decisions based on other policy considerations, revenue generated through such bilateral arrangements would go to the United Nations Iraq Account. Foreign Companies would be required to report to the Security Council Committee on the implementation of their contractual obligations.

(iii) As an additional measure, the Security Council may consider authorizing private investment flows into the oil industry and other secondary export industries unrelated to the military complex (fertilizer, sulfur, urea, dates, nuts etc), as well as into agriculture, on the understanding that strict international controls would be maintained over financial resources obtained through exports under the escrow account, and that a strict arms embargo and control over dual use items would remain in place. In this context, foreign companies could assume other responsibilities that might positively impact on the humanitarian situation, particularly in terms of reconstruction and infrastructure rehabilitation.

(iv) The Security Council might examine ways and means to bring petroleum and other oil products presently exported outside the humanitarian programme

established pursuant to resolution 986 (1995) into the framework of the programme.

(v) The international community should be encouraged to provide supplementary funding for humanitarian efforts in Iraq, both within the context of the "oil for food" programme and outside its parameters, either bilaterally or through multilateral organizations as well as international non-Governmental organizations. Such funding could be channeled through UN agencies to support such initiatives as the parallel intervention by the WFP to provide special assistance, in addition to efforts carried out under resolution 986 (1995).

(vi) Notwithstanding the provisions of paragraph 8 (C) of resolution 986 (1995) to transfer to the United Nations Compensation Fund the same percentage of funds deposited in the escrow account as that decided by the Council in paragraph 2 or resolution 705 (1991) of 15 August 1991, the Security Council could authorize - possibly as a temporary measure - reducing by an agreed percentage the revenue allocated to the United Nations Compensation Commission or borrowing from the Compensation fund up to a level to be determined by the Council, in order to increase the amount of revenue available for the purchase of urgently needed humanitarian supplies. Claims from individuals would be given priority whereas Governments and institutions would agree to the deferral of payments for their own claims.

(vii) In order to increase the amount of revenue available for the purchase of humanitarian supplies to Iraq, the Security Council may wish to suspend, as a temporary measure, the implementation of paragraph 8 (g) of resolution 986 (1995) which provides for the transfer of up to 10 Million US dollars every 90 days from the escrow account established by the above resolution to the escrow account provided for in resolution 706 (1991) and 712 (1991) for the purpose envisaged in paragraph 6 of resolution 778 (1992).

(viii) At the request of States holding frozen Iraqi assets, the Security Council may authorize the release of such assets to the 986 escrow account or another agreed upon mechanism in order to fund the procurement of urgently needed humanitarian supplies.

(ix) The Secretary-General could be requested to ensure that every effort be made to minimize actual costs of the United Nations activities associated with the implementation of resolution 986 (1995) for which deductions are provided for pursuant to paragraph 8 (D) of that resolution, in order to maximize the availability of revenue for the purchase of urgently needed humanitarian supplies.

(x) As a confidence building measure, it is recommended that Iraq be furnished by the UN with a daily statement of the status of the escrow account.

B) Supply of humanitarian goods.

55. In line with paragraph 16 of the Note by the President of the Security Council on the Work of the Sanctions Committees of 29 January 1999 (document S/1999/92), and in response to concerns expressed by several other presentations, the panel proposes the approach outlined below.

(i) Pre-approved humanitarian supplies.

Foodstuffs, pharmaceuticals and medical supplies, as well as basic or standard medical and agricultural equipment and basic or standard educational items included in a list of exempted humanitarian supplies, pre-approved by the 661 Committee, on the basis of a proposal from the Office of the Iraq Programme (OIP), should be contracted and procured directly by the Government of Iraq without any requirement for approval or notification to the 661 Committee. The exporting State should notify the OIP of the goods to be exported, the agreed price, as well as the estimated time of arrival of the goods in Iraq. Payment from the escrow account would be authorized by the United Nations Controller after receipt of confirmation of the arrival of the goods in Iraq from the independent inspection agents stationed at the agreed entry points.

(ii) Other supplies.

Goods not included in the pre-approved list of humanitarian supplies that are not dual use items should be authorized by the 661 committee within two business days, upon receipt of a request from the exporting State, containing a description of the goods to be exported and the agreed price, as well as the estimated time of arrival.

(iii) Dual-use items.

Dual-use items should be processed under the Export/Import Mechanism as per Security Council resolution 1051 (1996). The requests for the supply of such items, along with the evaluation and comments as per the aforementioned resolution, should be submitted to the 661 Committee for approval under the no-objection procedure.

C) Other recommendations

56. (i) Under the relevant Security Council resolutions the Government of Iraq may not have direct or indirect access to revenue raised under resolution 986 (1995). This limitation is seriously impeding the distribution of some humanitarian supplies, especially in the Center/South. Given this situation, which was raised by several presentations to the panel, the Security Council should consider the establishment of a "cash component" for the Center/South on the basis of plans submitted by Iraq and approved and monitored by the OIP. Respect for the legitimate national sovereignty and dignity concerns of Iraq should be ensured in the negotiation of any appropriate arrangement.

(ii) The panel notes that imported food and grain should supplement rather than substitute local produce. "Oil for food" resources should be used to procure food locally if and when available, thus stimulating local production. This will not only contribute to keep farmers active instead of turning them into aid-dependent consumers, but also free additional resources for other necessary humanitarian supplies. It is recommended that a joint assessment be conducted by the UN and

concerned Iraqi authorities to establish the scale of the issue and identify remedial measures.

(iii) Relevant contracts arrived at in the context of the "oil for food" programme might include a clause for installation and training services to be provided by the supplier or other parties, utilizing Iraqi labor and expertise to the maximum extent possible.

(iv) A time-limit clause could be introduced into all "oil for food" contracts so as to provide an incentive for early delivery of goods and help clear blocked resources in the escrow account.

(v) International organizations and NGO's should be encouraged to provide published material of an educational character to Iraq. Greater access to the international media and to imported publications in general should be promoted. Additional measures aimed at reducing the isolation of Iraqi educators, health care providers, students and others - including, possibly, civilian air traffic for the promotion of cultural and intellectual exchanges - should also be considered. Specialized UN agencies and programmes could be requested to identify measures destined to improve the situation of Iraqi youth.

(vi) In line with paragraph 17 of the aforementioned Note by the President of the Security Council (document S/1999/92), solutions should be sought to ensure that exemptions to the sanctions regime on religious grounds be made effective.

D) Recommendations to the Government of Iraq.

57. It is clear that improvements in the humanitarian situation require the full cooperation of the government of Iraq. In this regard, the panel makes the following recommendations.

(i) The Government of Iraq should do its utmost to ensure the timely distribution of humanitarian goods, in particular medical supplies, and clear existing and unjustifiable bottlenecks at its warehouses.

(ii) The Government of Iraq should address effectively the needs of vulnerable groups in the Center/South, especially those of street children, the disabled, the elderly and the mentally ill, among others, and allow freer access to UN agencies and recognizably impartial and bona fide NGOs to restricted areas and sections of populations for adequate evaluation of their nutritional and general humanitarian condition.

(iii) The Government of Iraq should refine their list of priorities in terms of packaging contracts through the humanitarian programme established pursuant to resolution 986 (1995).

(iv) The Government of Iraq should ensure that those involuntarily displaced receive adequate humanitarian assistance, without having to demonstrate that they have resided for six months in their places of temporary residence.

(v)The Iraqi Government should extend full cooperation to the mine-clearance programme in the North (e.g. through provision of mine-field maps, expeditious transit of equipment etc.) facilitating the work of UNOPS, and consider the initiation of de-mining efforts in other areas of the country.

* * * * * * *

58. In presenting the above recommendations to the Security Council, the panel reiterates its understanding that the humanitarian situation in Iraq will continue to be a dire one in the absence of a sustained revival of the Iraqi economy, which in turn cannot be achieved solely through remedial humanitarian efforts.

Annex III

REPORT OF THE THIRD PANEL ESTABLISHED PURSUANT TO THE NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL (S/1999/100) OF 30 JANUARY 1999, ON PRISONERS OF WAR AND KUWAITI PROPERTY

I - INTRODUCTION

1. The panel on prisoners of war and Kuwaiti property, established pursuant to the note by the President of the Security Council (S/1999/100) of 30 January 1999, is submitting its report to the Security Council in accordance with paragraphs 1,2,3 and 6 of the aforementioned note.

1 - Mandate, Composition and Working Methods of the Panel

2. On 30 January 1999 the Security Council decided that it would be useful to establish three separate panels on Iraq and to receive recommendations from them no later than 15 April 1999. In paragraph 2 of document S/1999/100, the Security Council invited Ambassador Celso L. N. Amorim of Brazil to chair each of the panels.

3. The full mandate of the third panel on prisoners of war and Kuwaiti property, as contained in paragraph 6 of document S/1999/100, reads as follows: "the third panel, on prisoners of war and Kuwaiti property, including archives, would involve the participation and expertise from the United Nations Secretariat and any other expertise. The panel would make an assessment, in consultation with relevant experts, of Iraqi compliance relating to prisoners of war, Kuwaiti property, including archives, as stipulated by Security Council resolutions. The panel would make recommendations to the Security Council with regard to these matters".

4. As announced by the Chairman on 12 February 1999, the third panel was composed of Messrs. Alvaro de Soto, Raymond Sommereyns, Francesc Vendrell and Ralph Zacklin. Taking into account paragraph 3 of document S/1999/100, the Chairman held consultations with panel participants and members of the Security Council on appropriate working methods and plans of work. It was agreed that the panel should make its assessment based on briefings and written submissions of those with firsthand information, including those directly concerned. For practical and political reasons, the panel should not, however, engage in any investigative work of its own.

2 - Meetings and Briefings

5. The panel met on 18 February and on 3, 4 and 9 March 1999 and considered information from a variety of sources. Written submissions were received from the International Committee of the Red Cross and from Mr. Max van der Stoel, Special Rapporteur on the situation of human rights in Iraq. The Chairman also received, informally, a non-paper by Iraq concerning the question of prisoners of war. The panel heard briefings by the following persons:

- Ambassador Prakash Shah, Special Envoy of the Secretary-General in Baghdad;

- Mr. Carlo Orsini, Italian expert on missing persons;

- Ambassador Mohammad Abulhasan, Permanent Representative of Kuwait to the United Nations;

- Mr. Ibrahim Al-Shahine, Vice-Chairman of the Kuwaiti National Committee on Missing Persons and Prisoner of War Affairs

- Ambassador James Lorocco, United States Representative in the Tripartite Commission

- Prince Torki Bin Mohamed Bin Saud Al-Kabir, Chairman of the Committee for Saudi Prisoners of War in Iraq

- Ambassador Graham Boyce, former United Kingdom Representative in the Tripartite Commission

- Mr. Nicolas Normand, French Representative in the Tripartite Commission.

II - PRISONERS OF WAR

1 – The Legal Framework

6. In assessing Iraqi compliance relating to prisoners of war as stipulated by Security Council resolutions, the panel took as the legal framework for its work the relevant Security Council resolutions and international humanitarian law provisions as well as other pertinent international agreements.

7. The particular provisions of Security Council resolutions most relevant to the mandate of the panel on prisoners of war and Kuwaiti property are contained in resolutions 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, and 706(1991) of 15 August 1991 all of which were adopted under chapter VII and are set out below:

SC res. 686 (1991) of 2 March 1991

Paragraph. 2 - *Demands that Iraq ...:*

.....

(c) **Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals detained by Iraq and return the remains of any deceased Kuwaiti and third-State nationals so detained.**

Paragraph 3 - *Also demands that Iraq:*

(c) Arrange for immediate access to and release of all prisoners of war under the auspices of the International Committee of the Red Cross and return the remains of any deceased personnel of the forces of Kuwait and the Member States cooperating with Kuwait pursuant to resolution 678 (1990).

SC res. 687 (1991) of 3 April 1991

Paragraph 30

Decides that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third State nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for;

SC res. 706 (1991) of 15 August 1991

Paragraph 6

Also requests the Secretary-General, in consultation with the International Committee of the Red Cross, to submit to the Council within twenty days of the date of adoption of the present resolution a report on activities undertaken in

accordance with paragraph 31 of resolution 687 (1991) in connection with facilitating the repatriation or return of all Kuwaiti and third-State nationals or their remains present in Iraq on or after 2 August 1990.

8. In summary, pursuant to these resolutions, Iraq was required (a) to immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals and return the remains of any deceased Kuwaiti and third-State nationals detained by Iraq; (b) to arrange for immediate access to and release of all prisoners of war under the auspices of the ICRC and return the remains of any deceased personnel of the forces of Kuwait and the Member States of the coalition; and (c) to extend all necessary cooperation to the ICRC by providing lists of such persons, facilitating the access of the ICRC to all such persons wherever located or detained and facilitating the search by the ICRC for those Kuwaitis and third-State nationals still unaccounted for (emphasis added).

9. The relevant provisions of the Security Council resolutions cited above do not impose any demands on Iraq which it is not already obligated to observe under the international humanitarian law instruments to which it is a party, notably the Third and Fourth Geneva Conventions of 1949. The Panel, therefore, found it useful to examine the pertinent provisions of these Conventions as regard the treatment of prisoners of war and the protection of civilian persons in time of war. These are set out below:

Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention).

Article 118: Release and Repatriation

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

.....

Article 119: Details of Procedure

.....

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

Article 126: Supervision

Representatives or delegates of the Protecting Powers[1] shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

.....

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

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[1] In the question of the Gulf War POWs, the ICRC itself is the Protecting Power

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention)

Article 35: Right to leave the territory

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. .....

If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

Article 143: Supervision

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

10. The Panel also examined the provisions of Protocol I of 8 June 1977 as regards missing persons and remains of deceased, to which Iraq is not a party. The pertinent provisions are as follows:

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977

Article 33: Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

.....

4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

11. The Panel noted that the legal framework which formed the basis of its work encompassed, strictly speaking, several categories of individuals - POWs, civilian internees, civilians - the treatment of which may be legally differentiated in the relevant international legal instruments, particularly in the Third and Fourth Geneva Conventions.

12. To complete the legal framework, mention should be made of the agreements entered into by Iraq and the Coalition Forces, which though not

formally linked in any way to the Security Council resolutions, are nevertheless closely related to the resolutions in time and substance. These include a Memorandum of Understanding agreed and signed in Riyadh on 7 March 1991 (the MOU), and a Plan of Operation Designed to Ascertain the Whereabouts of the Fate of the Military and Civilian Missing, together with Rules of Procedure and Plan of Operation of a Special Sub-Committee on Military and Civilian Missing and Mortal Remains Signed in Riyadh on 12 April 1991 (the Riyadh Agreement) which are annexed to the present report (see Annex I).

2 - Assessment

a) Persons repatriated and the work of the Tripartite Commission

13. At the end of the Gulf War, the International Committee of the Red Cross (ICRC), in accordance with its mandate under the Third and the Fourth Geneva Conventions, made arrangements for a global repatriation of more than 70,000 Iraqi and over 4,000 Kuwaiti and allied prisoners of war, and over 1,300 civilian internees and detained civilians of Kuwaiti or third nationality. Others returned to Kuwait after the insurrection in Southern Iraq in March 1991.

14. Following the global repatriation, the work of ascertaining the fate of missing military personnel and civilians was assigned to a mechanism, later called the Tripartite Commission, formally created on 12 April 1991 by the document entitled "Plan of Operation Designed to Ascertain the Whereabouts of the Fate of the Military and Civilians Missing", known as the Riyadh Agreement (see annex I). The Tripartite Commission has been chaired by the ICRC since its inception and composed of representatives of Iraq, on one side, and of Saudi Arabia, France, Kuwait, United Kingdom and United States, as States party to the Coalition Forces, on the other side.

15. After five meetings in Riyadh, between March and April 1991, and one meeting in Geneva, on October 1991, Iraq decided not to participate in the Tripartite Commission until July 1994. Even in the absence of Iraq, two "consultations" were held in Geneva during this period. From July 1994 until last year, the Tripartite Commission met regularly three times per year. In total, the Tripartite Commission has held twenty-three meetings to date, the last of which was held on 9 September 1998.

16. On 8 December 1994, the members of the Tripartite Commission decided to set up, as a subsidiary body, a Technical Sub-Committee (TSC), in order to "expedite the search process for all persons for whom inquiry files have been

opened, facilitate the exchange of all requisite information related to individual inquiry files, decide and implement follow-up measures that might become necessary on the basis of investigation results, and foster a climate of confidence".[2] The TSC is convened every month in the demilitarized zone on the Iraq-Kuwait border. The 36th meeting of the Technical Sub-Committee took place on 2 December 1998.

17. Recently, Iraq officially notified the ICRC that it would not take part in the 37th session of the TSC, scheduled for 4 January 1999. The same notification was made in relation to the 24th meeting of the Tripartite Commission, scheduled for 3 February 1999. In its notification, Iraq pointed out that three of the States in the Tripartite Commission have no individual file on any missing persons of their nationality. In the absence of Iraq, consultations were held in Geneva on 3 February 1999. The ICRC remains available for contacts with all parties and, in this regard, recently held consultations with Iraqi authorities in Baghdad.

18. The presentations heard by the panel on the work of the Tripartite Commission showed a common perception that, in spite of the efforts made, results were so far very limited. Nevertheless, the Commission is considered the most appropriate mechanism to deal, on a humanitarian basis, with the issue of persons unaccounted for. There have been expressions of surprise and disappointment on the decision of Iraq not to take part in the meetings of the Tripartite Commission and its Technical Sub-Committee. There was unanimous belief that the ICRC had played and should continue to play a crucial role in this exercise. The panel also discussed, internally and during the briefings, possible ways to deal with the subject in the future, taking into account the need to keep the Security Council informed of the evolution of the issue.

19. The ICRC, in the fulfillment of its mandate as a neutral and impartial intermediary and to ensure transparency in its humanitarian work, bases its actions on documented cases and does not engage in investigation. It was not possible for the ICRC to reach an agreement with Iraq under which it would be granted access to all persons detained in Iraq in accordance with the ICRC's standard modalities.

b) Present status

20. By a decision of the 16th meeting of the Tripartite Commission, the date of 31 July 1996 was set as the deadline for the parties to submit "Official Request Forms"

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[2] Paragraph 6 of the document titled "Technical Sub-Committee of the Tripartite Commission", signed on 8 December 1994 by the members of the Tripartite Commission.

(individual files for persons not accounted for). According to the ICRC, by the deadline, 608 files were submitted by Kuwait (including 7 files for Saudi nationals), 17 files by Saudi Arabia, and 789 files by Iraq. These files were to be dealt with in two stages, according to their dates of submission.

21. The first stage, which is still taking place, comprises 598 files submitted by Kuwait (including the 7 files for Saudi nationals), 17 by Saudi Arabia and 102 submitted by Iraq. The second stage includes 10 files submitted by Kuwait and 687 submitted by Iraq, of which 446 have been transmitted by the ICRC to one of the investigating parties. The remaining 241 will be forwarded by the ICRC as soon as the Iraqi authorities are in a position to supplement the information given on the files. The ICRC also points out that some files pertaining to persons unaccounted for were also presented by Iraq after the deadline of 31 July 1996. These are being processed outside the framework of the Tripartite Commission, on the basis of the ICRC's mandate concerning missing people.

22. The panel heard explanations from the Kuwaiti side that after the liberation and normalization of life in the country, Kuwaiti authorities submitted to the ICRC 628 individual files of persons not accounted for. Of that number, 20 persons have been found to have dual names. Three other cases were closed since the submission date, bringing the number of active files to 605. Accordingly, even if 608 files were submitted by Kuwait to the ICRC in July 1996, Kuwaiti authorities consider that the total number of files actually open is 605.

23. Out of those, according to Kuwaiti figures, 570 files relate to Kuwaiti nationals and 35 to third country nationals who were living legally in Kuwait at the time of the occupation and whom Kuwait, in consultation with their respective embassies, represented in its contacts with the ICRC. According to information received from Kuwait, most of the missing persons are civilians who were arrested in the first weeks of occupation, and would have been seen, at least once, in detention, by other prisoners who were later released.

24. The panel heard from Saudi representatives that there are 24 Saudi nationals still unaccounted for, 21 of whom are civilians. As others, the Saudi delegation emphasized the humanitarian character of the issue and expressed interest in a higher degree of cooperation between Iraq and the Tripartite Commission. According to the information provided, there are now approximately 5,300 Iraqis living in Saudi Arabia as refugees, under the auspices of the United Nations High Commission for Refugees. These persons went to Saudi Arabia in the period of the war or during the unrest in the Southern Governorates of Iraq, and refused to be repatriated to Iraq after the normalization of the situation.

25. The Government of Iraq, in turn, argues that there are no prisoners of war or detainees in its territory. Consequently, from the point of view of Iraq, the issue is one of missing persons, not POWs. The panel was informed that Iraq has responded to 126 cases, based on a "recollection process" of Iraqi officers who recall that 121 of these persons were arrested, interrogated and sent to detention centers in the Southern Governorates. The subsequent unrest in the South of the country, in the beginning of 1991, according to Iraq, led to the escape of the detainees in question. According to the Iraqi information, no knowledge of the fate of this group could be established after that event.

26. The Government of Iraq also states that thanks to this "recollection process", five other cases were identified as those of persons killed in Kuwait or in combat. The mortal remains of one of the five persons were returned and the file was closed. Iraqi authorities claim that eight other cases were solved or withdrawn by Kuwait. As for the rest of the files, Iraq claims that all documents that could provide a basis for the search have been destroyed, burned or lost in the outbreak of riots in its Southern Governorates. As regards the question of visits to places of detention, while reaffirming that it has no prisoners of war, Iraq says it was not possible to reach agreement with the ICRC, for it was under no obligation to accept proposals that would mean, from its standpoint, an extension of the scope and duration required for the objective of searching for missing persons.

III - KUWAITI PROPERTY

1 - The Legal Framework

27. In assessing Iraqi compliance relating to Kuwaiti property, including archives, as stipulated by Security Council resolutions the panel took as the legal framework for its work the relevant Security Council resolutions as well as other pertinent international agreements.

28. The particular provisions of Security Council resolutions relevant to this part of the mandate of the Panel are contained in resolutions 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991 and 706 (1991) of 15 August 1991 and are as follows:

SC res. 686 (1991) of 2 March 1991

Paragraph 2 - *Demands that Iraq*:

.....

(d) Immediately begin to return all Kuwaiti property seized by Iraq, the return to be completed in the shortest possible period.

SC res. 687 (1991) of 3 April 1991

Paragraph 15

Requests the Secretary-General to report to the Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact.

29. In summary, these resolutions required Iraq to immediately begin to return all Kuwaiti property, the return to be completed in the shortest possible period (emphasis added).

30. The Panel also considered as part of the legal framework in relation to property the provisions of the Hague Regulations Concerning the Laws and Custom of War on Land, annexed to the IV Hague Convention of 18 October 1907, generally recognized today as forming part of customary international law, insofar as they relate to respect for property and the Fourth Geneva Convention, in particular Articles 23, 29, 46 and 47 of the Hague Regulations and Articles 33 and 53 of the Fourth Geneva Conventions (see Annex II).

2. Assessment

a) The Return of Property to Date

31. The question of the return of property was reviewed by the Security Council in the aftermath of the Gulf War. By a letter dated 19 March 1991 (S/22361) the President of the Security Council informed the Secretary-General that the members of the Security Council were of the view that the modalities for the return of property from Iraq, in accordance with Security Council resolution 686 (1991), should be arranged through the Secretary-General's Office, in consultation with the parties. The same letter also stated that the mentioned procedure had the agreement of Iraq and Kuwait.

32. Subsequently, the Secretary-General appointed a Coordinator for the return of property, whose role was to receive, register and submit to Iraq claims presented by Kuwait and to facilitate the return of property which Iraq had declared that it had in its possession and was ready to return.

33. In a report dated 2 March 1994 (S/1994/243) the Secretary-General informed the Security Council of the arrangements that had been made to carry out this task and provided it with a summary of the hand-over operations to that date. As indicated in the report, it was not considered to be within the scope of the mandate of the Coordinator to investigate or verify claims from Kuwait or Iraq. At no time was the property to be returned ever in the possession of the United Nations. The report also explained that attempts to match claims by Kuwait with items returned by Iraq had become impossible to do given the destruction of many records during the war and the fact that some items were returned at the initiative of Iraq and not necessarily as the result of a request by Kuwait. The original hand-over documents for all returned items remain available for inspection in the Department of Political Affairs. Days later, in document S/1994/243/Add.1 the Secretary-General provided a list received from the Government of Kuwait of property which it claimed had not been returned or which had not been returned intact.

34. By a letter dated 27 September 1994 (S/1994/1099), the Permanent Representative of Iraq informed the Secretary-General that upon the completion of the hand-over of a C-130 aircraft, Iraq would have returned "all the Kuwait property in its possession, having nothing else whatever to return". He added that Iraq would therefore have "fulfilled all its obligations under paragraph 2 (d) of resolution 686 (1991) and paragraph 15 of resolution 687 (1991)". In response, on 3 October 1994, the Permanent Representative of Kuwait transmitted to the Secretary-General "an indicative but far from exhaustive list of the Kuwait property that has yet to be returned" (S/1994/1126).

35. The issue was raised again in a report dated 16 December 1996 (S/1996/1042), by which the Secretary-General noted that the Government of Kuwait continued to stress the importance it attached to the return of irreplaceable property, specifically, archives belonging to the Offices of the Emir, the Prime Minister, the Cabinet and the Foreign Ministry. Kuwait was also still seeking the return of private property and military property including 8 Mirage F1s, 200 BMB2 carriers, 6 M84 tanks, 90 M113 carriers, one Hawk missile battery, 483 strila 3 missile batteries, 206 Osa missile batteries, and 5 Amon anti-aircraft missile batteries. The Secretary-General noted that those items had been brought to the attention of Representatives of the Government of Iraq on a number of occasions. Annexed to the report was a list of the property returned subsequent to the issuance of the Secretary-General's report of 2 March 1994, including property returned after Iraq's 1994 declaration that it had no more property to return.

36. On 3 June 1997 and on 7 December 1998, the Permanent Representative of Iraq informed the Coordinator that Iraq authorities had found in local markets several small items which contained markings identifying them as belonging to Kuwait. These have yet to be returned to Kuwait due to the absence of a representative of the Coordinator in the field.

37. In a meeting on 7 October 1997, the matter of the missing archives and military equipment was once again brought to the attention of Iraqi authorities. The Deputy Permanent Representative of Iraq informed the Coordinator that it was his Government's position and principle that whenever property was found, it was returned to Kuwait and that Iraq would continue to try its best to cooperate on this issue.

38. Subsequent to his appointment as Special Envoy of the Secretary-General in March 1998, Ambassador Prakash Shah is also reported to have brought the matter of the missing Kuwait property to the attention of Iraqi officials in Baghdad.

b) Information Provided to the Panel

39. The panel heard from Ambassador Prakash Shah, Special Envoy of the Secretary-General in Baghdad, who explained that in December 1998, in the context of the comprehensive review, he had raised with Mr. Tariq Aziz, Deputy Prime Minister of Iraq, the issue of missing property as an important one which should be resolved. Referring specifically to the question of the missing archives, Mr. Aziz had responded that the property issue was not a major one and that, in his view, it could be easily settled in the context of the comprehensive review.

40. The Permanent Representative of Kuwait to the United Nations informed the panel that no private property had been returned but claims for compensation had been presented to the United Nations Compensation Commission. He also clarified that while much of the property would be subject to claims at the United Nations Compensation Commission, the return of the archives was essential. With regard to the museum objects, compensation could not be paid for those items either since they were in fact unique pieces. As for the weapons which had not yet been returned, Kuwait stressed that the latest information it received was that the anti-aircraft weapons were intact and in place around Baghdad and at other sites. Therefore, it was not reasonable that Kuwait should be asked to submit claims for compensation for items which were known to exist. The Kuwaiti Permanent Representative qualified Iraq's compliance as "selective compliance".

41. The panel also reviewed documentation provided by the United Nations Compensation Commission. In accordance with a report and recommendations concerning claims by Governments and international organizations, it was noted that the panel of commissioners had made a preliminary conclusion that there was nothing that the Commission could do for claimants seeking monetary compensation for loss of irreplaceable objects and other tangible properties stolen by Iraq, since the UNCC had been established for purposes of awarding monetary compensation for losses and had no mechanism for requiring or enforcing specific performance. Some other claims by Kuwait had been rejected due to a lack of supporting evidence. With respect to such claims, the panel notes the difficulty Kuwait would have in providing such evidence given the destruction or loss of documentation during the period of Iraq's occupation or departure from Kuwait.

IV - OBSERVATIONS AND RECOMMENDATIONS

1- Observations and Recommendations on Prisoners of War

42. The determination, in 1999, of Iraq's compliance with the relevant Security Council resolutions adopted in 1991, must take into account the intervening events, and in particular, the global repatriation, under ICRC auspices of prisoners of war, the return and repatriation of Kuwaiti civilians and third-State nationals and detainees, and the return of property, though the parties may disagree on the state of the returned property.

43. If compliance with Iraq's obligations is to be assessed in the light of present circumstances, the status of the remaining 605 persons unaccounted for - whether prisoners of war, civilian detainees or missing persons - would be crucial, for each of these categories of individuals entail for the detaining power different obligations under the relevant legal instruments (see paragraph 11). Given the limitation of not being able to investigate the facts (paragraph 4), the panel found itself unable to make a definitive determination.

44. As mentioned in paragraph 12, the panel does not identify a direct legal link between the Security Council resolutions and the documents relating to the creation of the Tripartite Commission. This does not exonerate Iraq from its duties to cooperate with the Tripartite Commission, under the provisions of those documents. The panel urges the Government of Iraq to reconsider its decision not to participate

in the Tripartite Commission and the Technical Sub-Committee, so that these mechanisms can continue to provide hope for the families of the missing persons.

45. The panel reaffirms the humanitarian character of the issue and stresses the need to avoid politicization in the discussions. The fate of the persons unaccounted for and the suffering of their respective families are humanitarian issues and should not be under the influence of any political consideration. The fact remains that it is essential to provide, under any circumstances, information to the families of the missing persons.

46. Experience of the Second World War shows that significant progress could only be made after a change in the geopolitical situation. The panel was informed that in situations where cooperation was initially limited, a large number of cases are still unresolved, for the passage of time proved to be detrimental to the expectations of accounting for missing persons. In this regard, the panel believes that progress between Iraq, Kuwait and Saudi Arabia in this humanitarian theme of accounting for missing persons could play an important role in the process of confidence-building and lead to an improvement in the overall political atmosphere. The positive impact that reciprocity and a mutual display of interest may have in the process should be emphasized.

47. Bearing in mind that this is essentially a humanitarian question, the panel stresses the importance of the work of the International Committee of the Red Cross and commends its tireless efforts towards the clarification of the whereabouts of the missing persons. The neutrality, independence and sensitivity of the ICRC should be respected and supported by all parties. The ICRC, whose role is irreplaceable, is uniquely qualified to deal with the matter and should continue to guide the process. Although progress has been below the level expected and desired by the international community, the Tripartite Commission and its Technical Sub-Committee, chaired by the ICRC, are indeed the fora that offer the best chance of progress for this issue.

48. The panel emphasizes the responsibility of all involved to cooperate fully with the work of the Tripartite Commission and to provide information in response to the files submitted by the other parties. Representatives of members States of the Tripartite Commission heard by the panel expressed, in various degrees, the opinion that Iraq's cooperation with the Tripartite Commission has fallen short of expectation. The panel was not convinced by the explanations furnished by Iraq regarding its inability to provide information on the files submitted through the ICRC.

49. While reaffirming the independence of the mechanisms chaired by the ICRC, the panel recognizes that, since the issue of prisoners of war is addressed in

Security Council Resolutions, the Security Council should have the opportunity to review the matter. The panel considers this report, in itself, as a means by which the Security Council is being kept updated on the prisoners of war question. In order to complement this information, and without detriment to the Tripartite Commission, the panel recommends that the Security Council to be periodically informed of the situation.

50. Any procedure to be established should take into account a) that the purpose is to ensure that the Council be informed of the issue, not to trigger a political discussion or to affect the humanitarian treatment of the issue; b) it should be a motivational factor for cooperation and a positive inducement for progress and understanding; and c) the need not to impinge on the work of the ICRC or to undermine the functioning of the Tripartite Commission. It should, therefore, be a discreet procedure, whose aim is to foster dialogue and confidence-building, so as to be helpful to the ultimate objective of informing the families of the fate of the missing persons. Success of this exercise is directly dependent on the cooperation of all parties involved.

51. The panel recommends that such a procedure take the form of a periodic report by the Secretary-General to the Security Council on the issue. Given the sensitivity of the matter, and in order to avoid counterproductive pressure and politicization, this report should not be too frequent – either semi-annually or annually. It should be based on information collected by the Secretariat from Iraq and Kuwait and the other States members of the Tripartite Commission. Bearing in mind the objectives of the report, as outlined in the previous paragraph, as well as its variety of sources, it is envisaged that this report comprise a broader perspective of the issue than the "Report of the Secretary-General Submitted in Accordance with Paragraph 6 of Security Council Resolution 706 (1991)", dated 12 September 1991 (S/23012).

52. The ultimate goal is to close the highest number of files possible in a satisfactory way. Meanwhile, a mid-term objective should be to attain a higher degree of cooperation, so that the families know that every possible effort is being made. While it is not inconceivable that, in a situation of war, people may have genuinely gone missing, there are insistent reports that Kuwaiti missing persons have been seen in Iraq. On the other hand, based on the information available, the panel cannot affirm beyond doubt that the missing persons are being kept secretly. The lack of information on their fate, however, nourishes uncertainties and frustration. The panel firmly believes that, for progress to be reached, it is fundamental both to show good will in ascertaining the fate of these persons, including by transparency and openness, and that no political advantage on the result of the search be sought. In this context, it is worth noting that the preservation of the impartial role of the ICRC may not be compatible with a mechanism that might be perceived as politicized.

2 - Observations and Recommendations on Kuwaiti Property

53. From the information received by the panel, it is clear that the Government of Kuwait places emphasis on the return of irreplaceable items, especially of archives and military equipment, besides the items (around 7% according to Kuwait) of the Islamic and the National Museums of Kuwait still unaccounted for. On the other hand, Iraq stated in September 1994 that, to the best of its knowledge, it had nothing else to return to Kuwait. The panel notes that, even after that declaration, a large number of items has been returned to the Government of Kuwait (S/1996/1042). The panel encourages the Government of Iraq to make additional efforts to find Kuwait property in its territory and to continue making all property found available for return through the Secretariat.

54. While recognizing that it is increasingly difficult to affirm that all items claimed are still in Iraq's possession, since more than eight years have passed since the events that led these properties to be taken out of Kuwait, the panel estimates that the level of cooperation from the Government of Iraq can be improved and, at the minimum, that more information should be provided. It should be noted that, differently from the POWs issue, there is no active mechanism in place to foster the return of property. Progress in this field could, therefore, be achieved by periodical reports by the parties to a focal point in the Secretariat, who would be responsible for maintaining an updated list of items yet to be returned, accompanied, when possible and appropriate, by supporting evidence. Based on data gathered by the focal point, the Secretary-General could report annually to the Security Council on progress on the return of property. A representative of the Coordinator for the Return of Property in the field should also be appointed as soon as possible, so as to facilitate the hand-over of property eventually found by Iraq, as those reported to have been found, but not yet returned, on June 1997 and December 1998.

55. Dialogue within the framework of the United Nations Compensation Commission (UNCC) could also be positive, in order to address those replaceable items that are claimed to have been lost in Iraqi possession. The panel suggests that the UNCC consider the possibility of such settlements to take place under its auspices, even after the deadline for the submission of claims. In that regard, it would be useful to have from the Government of Kuwait an updated list of items not yet submitted to the UNCC, the return of which need not to be pursued, provided compensation is arranged.

56. Although Iraqi authorities have returned a number of items, so far Iraq has not addressed properly the question of missing archives. The Government of Iraq is under obligation to return the archives of the Emir, the Prime Minister, the Cabinet and the Foreign Ministry. It is noted that Iraq has not even attempted to provide a credible explanation on the whereabouts of the official archives. In that

same sense, the assertion by Kuwait that Iraq is in possession of military equipment seized from Kuwait during the occupation needs to be properly addressed by the Iraqi authorities. As noted earlier, even after declaring having nothing else to return, Iraq handed over a number of pieces of military equipment. Iraq has yet to respond to the repeated claims by Kuwait that there is still military equipment to be returned.

57. The panel reaffirms Iraq's obligation to implement paragraph 2 of Security Council Resolution 686. While, as in any situation of war, it may never be possible to reach the point in which the Security Council will have 100% of certainty that all items in Iraq's possession were returned, thus allowing for the determination that the return has been completed, the absence of credible explanation from Iraq on the missing archives and military material does not allow the panel to conclude that Iraq has fully complied with paragraph 2 of SC resolution 686.

REPORT OF THE THIRD PANEL ESTABLISHED PURSUANT TO THE NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL (S/1999/100) OF 30 JANUARY 1999, ON PRISONERS OF WAR AND KUWAITI PROPERTY

ANNEX I

- "Memorandum of Understanding", signed in Riyadh on 7 March 1991

- "Plan of Operation Designed to Ascertain the Whereabouts of the Fate of the Military and Civilian Missing" and "Rules of Procedure and Plan of Operation of the Special Sub-Committee on Military and Civilian Missing and Mortal Remains", signed in Riyadh on 12 April 1991

MEMORANDUM OF UNDERSTANDING

The undersigned Heads of delegation, duly authorized to represent and commit their governments,

- reiterating their readiness to fully comply with all the provisions of the Four Geneva Conventions of 12 August 1949,

- endeavouring to carry out, as rapidly as possible, the repatriation of all POWs captured and civilians arrested in connection with the events of 2 August 1990 and thereafter,

- accepting the principles put forth therefore by the International Committee of the Red Cross (ICRC) in its memorandum, dated 5 March 1991,

have agreed during a meeting held in Riyadh on 7 March 1991, under the chairmanship of the ICRC, upon the following operational plan:

All Parties agree that the next meeting will take place in Riyadh on 21 March 1991, at 9 p.m. local time.

Before this meeting the Parties will undertake the following steps to the best of their abilities and in good faith:

1. The Coalition Forces will allow for the registration through the ICRC of all Iraqi POWs and civilians taken into captivity by the Parties to the Coalition on or after 2 August 1990, wherever they may be interned, to be completed by 20 March 1991.

   It was agreed that transfers to and from camps will gradually stop, till 20 March 1991 as to facilitate ICRC registration.

   A plan on the progressive "freezing" of the camps will be worked out between the ICRC delegation in the Kingdom of Saudi Arabia and the Detaining Powers by Saturday, 9 March 1991.

2. The Iraqi Authorities will submit to the ICRC delegation in Baghdad most urgently, at the latest 20 March 1991, numbers, nominal lists and locations of all Kuwaiti and other foreign nationals they are holding in the context of the events which started on 2 August 1990. These data will be transmitted immediately to the Powers of Origin by the ICRC.

3. The Iraqi Authorities will immediately grant the ICRC access to all persons mentioned in para. 2, so that its delegates can verify their identities, their well-being and their willingness to be repatriated. The Iraqi Authorities will extend to the ICRC all facilities needed to enable it to complete this process before the meeting of 21 March 1991.

4. The ICRC and the Parties will start to repatriate POWs and civilians interned to their Country of Origin before 21 March 1991. Such

repatriations shall only be restricted by logistical considerations and the capacity of the Powers of Origin to receive their own nationals.

Repatriation operations before the meeting of 21 March 1991 will be carried out by land as of 11 March 1991.

Special repatriation operations, such as for Kuwaiti nationals held in Basra, will be arranged separately, based on local conditions.

5. During the meeting of 21 March 1991 the ICRC will submit proposals regarding

- the question of missing in action and mortal remains not returned before 21 March 1991,
- the termination of the repatriation process, and
- the sharing of the costs of this operation.

Agreed and signed in Riyadh, on 7 March 1991.

For the Coalition Forces:

(Signed) H.E. Dr. Mohammad Omar Madani
Kingdom of Saudi Arabia

(Signed) Col. G. Hussenot Desenonges
Republic of France

(Signed) Col. Abdullah Hamad Al-Sultan
State of Kuwait

(Signed) Col. Strong
United Kingdom

(Signed) Brig. Gen. P. Fratarangelo
United States of America

For the Republic of Iraq:

(Signed) H.E. Dr. Akram Al-Witry

PLAN OF OPERATION DESIGNED TO ASCERTAIN THE WHEREABOUTS OF THE FATE OF THE MILITARY AND CIVILIAN MISSING

1. REMAINING PRISONERS OF WAR AND CIVILIAN INTERNEES OR PROTECTED CIVILIANS ON THE TERRITORY OF AN ADVERSE PARTY.

1.1 Upon completion of the general repatriation operation, the parties to the conflict shall agree on measures to be taken to:

- trace dispersed prisoners of war (POWs) and interned civilians, and civilians protected by the Fourth Convention on the territory of an adverse party, and

- arrange for their repatriation in conformity with Article 118 of the Third Convention and Articles 134 and 137 of the Fourth Convention.

1.2 All POWs who have refused to return to their home countries during the general reparation process will be interviewed by ICRC delegates as to their intentions for the future, including the possibility of meeting consular representatives of their home countries and informing their family and/or their Power of Origin of their whereabouts.

2. INFORMATION ON THE DECEASED

2.1 The parties to the conflict shall provide to the adverse party/parties, through the intermediary of the ICRC and as rapidly as possible, all available information regarding

- the identification of deceased persons

- the gravesites of decreased persons

belonging to the adverse party/parties.

2.2 At the request of the Power on which the deceased depend, the parties to the conflict shall organize the repatriation of the mortal remains and/or allow the identification of the deceased by the adverse party.

3. MISSING PERSONS

3.1 COLLECTION OF INFORMATION ON MISSING PERSONS

3.1.1 Each party is responsible for compiling a list of its nationals reported missing, taking into account:

- captured persons - POWs or civilian internees - who have been repatriated;

- deaths recorded among members of its armed forces;

- notifications of deaths and information relative to deceased persons received from the adverse party/parties through the intermediary of the ICRC.

3.1.2 As regards its missing nationals, each party is responsible for compiling a file with as many details as possible, on the basis of the attached form.

As a rule, there should be one file for each missing person.

3.2 PROCESSING MISSING PERSON FILES

3.2.1 Each opened file shall be sent in triplicate to the ICRC which shall arrange for it to be forwarded to the party concerned.

The ICRC shall assign a reference number to each file processed by it.

3.2.2 On the basis of the contents of each file, the adverse party/parties shall take all possible measures (administrative steps and appeals to the public) to obtain information on the person reported missing;

Details of the various measures taken and the results obtained shall be recorded on a tracing request form, duly dated and authenticated by the party concerned. All documents relative to the measures taken and the results obtained shall be included in the file. Any first-hand accounts shall be dated and shall contain the name(s) and address(es) of the witness(es).

3.2.3 Once the enquiry has been completed, the tracing form and the accompanying documents shall be returned to the ICRC, which shall forward them to the Power on which the missing person depends.

Once the case has been resolved, the file shall be closed by the Power on which the missing person depends and the family shall be informed accordingly.

* * * * * * *

SPECIAL SUB-COMMITTEE ON MILITARY AND CIVILIAN MISSING AND MORTAL REMAINS

RULES OF PROCEDURE AND PLAN OF OPERATION

BASIC RULES

The Special Sub-Committee on military and civilian missing and moral remains (hereinafter "the Sub-Committee")

- in conformity with the Geneva Conventions of 12 August 1949, and in particular

a) Articles 16 and 17 of the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949 (hereinafter "the First Convention"),

b) Articles 19 and 20 of the Geneva Convention for the amelioration of the condition of wounded, sick and ship-wrecked members of armed forces at sea of 12 August 1949 (hereinafter "the Second Convention"),

c) Articles 118, 119, 120, 121, 122 and 123 of the Geneva Convention relative to the treatment of prisoners of war of 12 August 1949 (hereinafter "the Third Convention"),

d) Articles 26, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139 and 140 of the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949 (hereinafter "the Fourth Convention"),

- recalling Point 6 of the Memorandum of Understanding adopted at the meeting in Riyadh on 7 March 1991, the document entitled "Military and Civilian Missing and Mortal Remains", adopted in Riyadh on 22 March 1991, and the document entitled "Military and Civilian Missing and Mortal Remains", adopted in Riyadh on 28 March 1991,

- in a common, sincere and genuine desire to lay down procedures for the successful, efficient and comprehensive implementation of the rules of the Geneva Conventions of 12 August 1949 providing for the settlement of the question of persons reported missing in connection with the conflict since 2 August 1990, and in accordance with the enclosed plan of operation,

works according to the rules set out below.

PART I

MEMBERS OF THE SUB-COMMITTEE

RULE I

(MEMBERSHIP)

1. The members of the Sub-Committee shall be representatives of:

   A) the Republic of Iraq,

   B) the following States party to the Coalition Forces.

   - Kingdom of Saudi Arabia
   - Republic of France
   - State of Kuwait
   - United Kingdom of Great Britain and Northern Ireland
   - United States of America.

2. In addition to its chief representative, each member shall be allowed up to three other representatives at each meeting.

RULE 2

(CHAIRMANSHIP)

1. The International Committee of the Red Cross (ICRC), acting as a neutral intermediary, shall put at the Sub-Committee's disposal a delegation, made up of three delegates and a secretary, which will chair the meetings of the Sub-Committee.

2. Following each meeting, the ICRC shall submit for the approval by the Sub-Committee the minutes containing the decisions adopted during the meeting.

PART II

PROCEEDINGS OF THE SUB-COMMITTEE: GENERAL RULES

RULE 3

(VENUE)

As a general rule, the Sub-Committee shall meet in Baghdad, Riyadh, or Kuwait and in Geneva whenever necessary.

RULE 4

(LANGUAGE)

The official and working language of the Sub-Committee shall be English.

RULE 5

(HOLDING OF MEETINGS)

1. The Sub-Committee shall hold as many meetings as required for the exercise of its functions.

2. Meetings shall be convened on dates decided by the Sub-Committee. At the end of each meeting, the place, time and date of the next meeting shall be agreed upon.

3. The Sub-Committee may be convened in Geneva for extraordinary meetings, at the request of the ICRC, to deal with specific questions. In such cases the ICRC shall notify the other members of the Committee of the date and time of the meeting. Whenever possible such notification shall be given at least ten days in advance.

RULE 6

(AGENDA)

1. Each member shall circulate to the other members and to the ICRC any proposed agenda items or a draft agenda of matters to be discussed at the next meeting. Notification of such items shall be given at least 48 hours before the next meeting.

2. At the beginning of each meeting the ICRC shall propose a comprehensive agenda.

3. The agenda shall be adopted by the Sub-Committee at the beginning of each meeting.

RULE 7

(DOCUMENTATION)

At least one copy of all working documents relating to the various items on the agenda shall be provided to each member of the Sub-Committee and the ICRC.

RULE 8

(QUORUM)

For its proceedings to be valid, the Sub-Committee shall require a quorum of at least one representative of the Republic of Iraq and representatives of at least three of the States party to the Coalition Forces.

RULE 9

(PRIVACY AND CONFIDENTIALITY)

1. The Sub-Committee shall meet in closed session. Its deliberations shall remain confidential unless it decides otherwise.

2. Apart from the representatives of Sub-Committee members and the ICRC, no other person may be present at its meetings, unless the Sub-Committee decides otherwise.

RULE 10

(HEARINGS)

The Sub-Committee may hear any person whom it considers to be in a position to assist it in the performance of its functions with regard to the Geneva Conventions.

RULE 11

(ADOPTION OF DECISIONS)

1. The decisions of the Sub-Committee shall be adopted by consensus, and reflected in the minutes of the meeting.

2. The decisions of the Sub-Committee shall be implemented immediately.

3. In matters relating to the implementation of the Geneva Conventions, the Sub-Committee's decisions are binding on the authorities of the Republic of Iraq and/or on those of the States party to the Coalition Forces.

4. Parts of a proposal or amendment may be adopted separately.

5. If the implementation of decision binds a party not present and participating in the decision, they will be afforded the opportunity to concur on the decision.

RULE 12

(RECONSIDERATION OF DECISIONS)

Once a decision has been adopted, it may be re-examined only if the Sub-Committee accedes to such a request.

RULE 13

(WORKING GROUPS)

The Sub-Committee may set up ad hoc working groups comprising a limited number of representatives of its various members. The terms of reference of such working groups shall be defined by the Sub-Committee.

PART III

PARTICIPATION BY THE ICRC

RULE 14

1. The ICRC shall participate in the work of the Sub-Committee in conformity with its role as defined by its mandate and by international humanitarian law.

2. The ICRC shall act as chairman of the Sub-Committee without prejudice to its humanitarian activities relating to the conflict. It shall retain - even after the setting up of the Sub-Committee - its full competence for tasks entrusted to it under the Geneva Conventions.

RULE 16

(COMMUNICATIONS, PROPOSALS AND INFORMATION SUBMITTED BY THE ICRC FOR CONSIDERATION BY THE SUB-COMMITTEE)

1. The ICRC shall bring to the Sub-Committee's attention, on its own initiative, any communication, proposal, plan of work or information which might contribute to the efficiency of the Sub-Committee's work. Any such contribution by the ICRC shall be dealt with as a matter of priority in the agenda of each meeting, if the Sub-Committee so decides.

2. The ICRC may [illegible] points of law, to make practical proposals or to intervene as consulting

PART IV

AMENDMENTS AND SUSPENSION

RULE 16

(AMENDMENTS TO THE RULES)

These rules of procedure may be amended by a decision of the representative of the governments concerned.

RULE 17

(SUSPENSION OF A RULE)

Upon the proposal by a Sub-Committee member, the application of a rule may be suspended for a limited period of time, subject to the provisions of the Geneva Conventions and to the approval of all members of the Sub-Committee.

Riyadh, 12 April 1991

ANNEX II

- Articles 23, 29, 46 and 47 of the "Hague Regulations Concerning the Laws and Custom of War on Land", annexed to the "IV Hague Convention of 18 October 1907"

- Articles 33 and 53 of the Fourth Geneva Convention

IV Hague Convention of 18 October 1907

Convention Respecting the Laws and Customs of War on Land

Entry into Force: 26 January 1910

(...)

ANNEX TO THE CONVENTION

Regulations respecting the laws and customs of war on land

(...)

Art. 23. In addition to the prohibitions provided by special Conventions, it is especially forbidden –

(a) To employ poison or poisoned weapons;

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;

(d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag or truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

Art. 29. A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: soldiers and civilians carrying out their mission openly, entrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belongs likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or territory.

Art. 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

Art. 47. Pillage is formally forbidden.

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF 12 AUGUST 1949

ARTICLE 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

ARTICLE 53

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.